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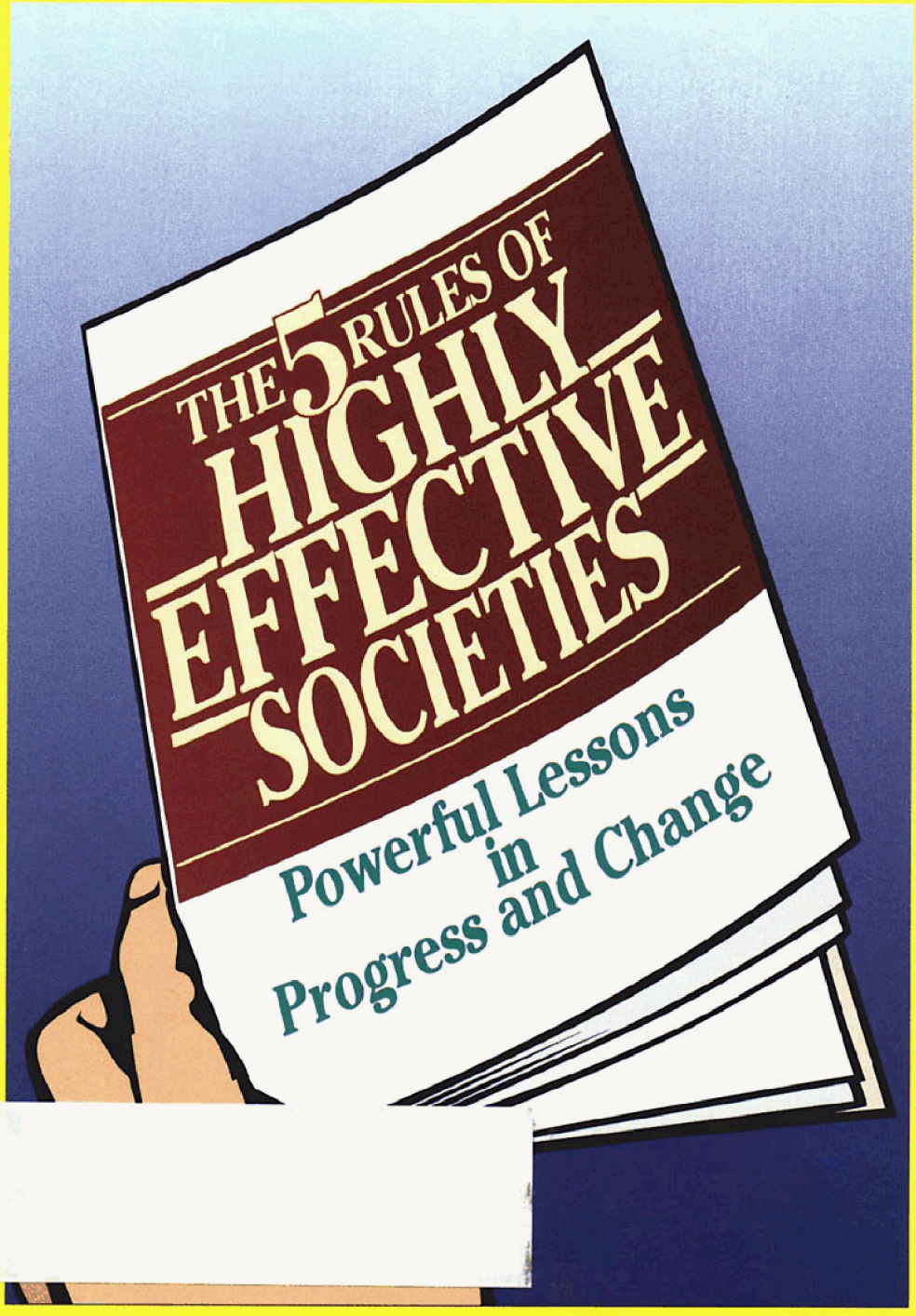

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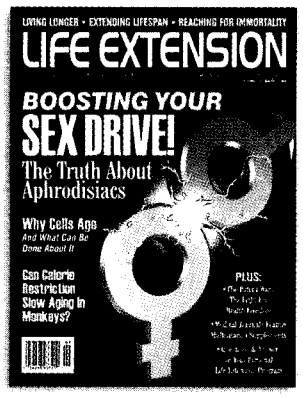

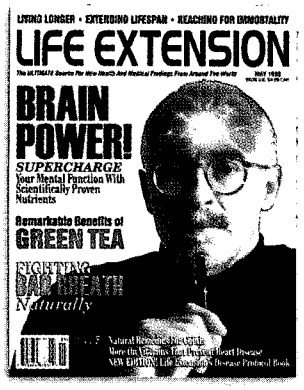
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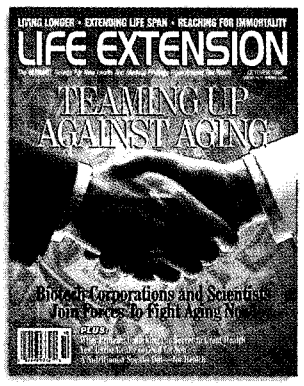

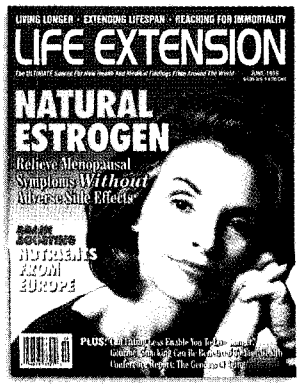
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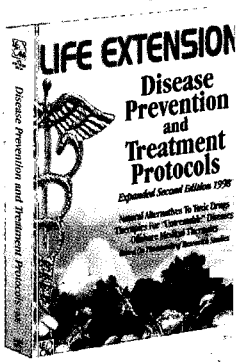

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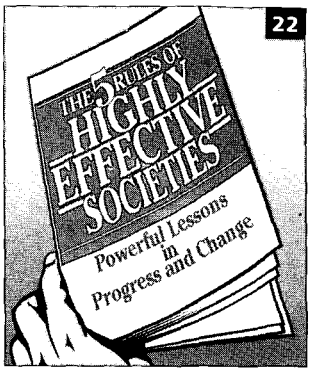

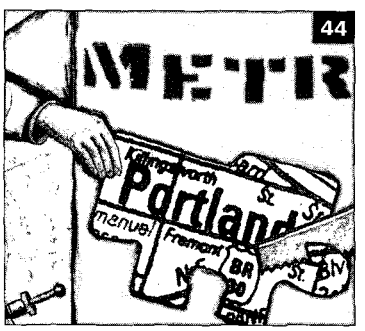

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Party Poopers

Why the Republicans deserved to lose

By Virginia Postrel

I told you so. The party that hates America will lose. The party that imagines no positive future, offers no "vision thing," will lose. The party that thinks it is better than the American people, that makes large segments of the voting public believe they are its enemy, that convinces people it wants the government to boss them around and destroy the things they love, will lose.

On November 3, that party was Republican. The GOP went down to humiliating defeat, losing close race after close race, plus many that weren't supposed to be close. The party lost its solid grip on the South and collapsed in California. It managed to lose seats in the House, an extraordinary result that even Democratic pundits failed to predict.

And it deserved to lose. Republicans sold out their economic base, invested all their hopes in scandals involving a president not on the ballot, and ran as the party of scolds, pork, and gloom. No wonder their voters stayed home.

This election was a test of the notion that Republicans can scorn anyone who talks about freedom, treat issues as matters of bribery rather than principle or vision, alternate between patronizing and ostracizing immigrants and women, regularly denounce American culture, and generally act obnoxiously toward the country they supposedly represent—and still win, because the Democrats are worse and Clinton is a sleaze.

That strategy might work if Democrats weren't savvy politicians. But the resolute "party of government" has been recruiting moderate candidates, and even left-wing Democrats have altered their messages. Hence, California has Governor-elect Gray Davis styling himself the forward-looking centrist. Some of the new Democratic moderates may even mean it.

Those great new Republican moral crusades, against gambling and medical marijuana, were resoundingly repelled. Democrats took governorships in South Carolina and Alabama—in the Bible Belt—by promising lotteries to fund education; they sold the idea as a voluntary "tax" that would compete with Georgia's cross-border lottery. The idea united good ol' boys and girls who want to have fun and upscale voters who want better schools and low taxes. Their opponents called gambling a sin and stopped there. Californians, meanwhile, voted overwhelmingly to allow Indian reservations to offer video poker.

As for medical marijuana, the five-out-of-five successful initiatives were only part of the story. As attorney general, Dan Lungren defied California's Prop. 215 to crusade against co-ops supplying cancer and AIDS patients with marijuana. The first thing voters knew about Lungren the would-be governor was that he was anti-abortion—his opponent's message—but the second was that he wanted to take pot away from sick people. You could read that in *Doonesbury*. Contempt for the law, the electorate, and the gravely ill did Lungren no good at the ballot box. (Neither did his late, tepid, cowardly support for anti-immigrant Prop. 187 in 1994, back when conventional wisdom decreed that nativism would lead Republicans to a bright future.)

The biggest candidate story of the day was the victory of Jesse "The Body" Ventura, the libertarian-talking former pro wrestler elected governor of Minnesota on the Reform Party ticket. Ventura beat not only the Republican but the day's most self-promoting paternalist, Hubert H. "Skip" Humphrey III, who had used his attorney general post to crusade nationally against cigarettes and Internet gambling.

None of this means that the public has somehow embraced a consistent—or even Ventura-style semi-consistent—libertarianism. Gun control is still popular in many places, Californians raised cigarette taxes by 50 cents a pack and imposed higher rates on snuff and cigars, and voters have trouble differentiating between "education" and the teachers unions.

But there are lessons in this election for politicians that go beyond the spin of "some agenda beats no agenda," the suggestion, courtesy of religious right leaders Gary Bauer and Randy Tate, that any Republican agenda would have been good enough.

1) Have a sense of proportion. Gambling is innocent fun, a form of escapist entertainment enjoyed mostly by salt-of-the-earth people who lead responsible lives. Demonizing it makes you sound like a lunatic. Marijuana is a mild drug with few harmful side effects, even when consumed purely for recreational purposes. Persecuting desperately ill people who use marijuana to relieve symptoms of their illnesses, especially when that use is legal, undercuts the credibility of law enforcement. And it makes you sound not only lunatic but cruel.

2) Be principled rather than partisan. Too many Republicans treat such serious questions as education reform and defense spending primarily as ways to attack Democratic constituencies or pander to their own. They do not make the case for the public interest, because they do not see the world in those terms. (See Michael Lynch's report on the budget deal in this month's "Capital Letters," page 18.) The public senses their unsavory motives—to destroy the teachers unions, for instance, rather than improve education—and gets the creeps. And Republicans lose the chance to explain what may indeed be good policies.

3) Make distinctions. If you listen to Republican spokesmen on television, all you hear of American popular culture—music, movies, television, even advertising—is that it is a consistent source of evil. But popular culture is as rich and varied as the people who consume it (also known as voters). To criticize it intelligently, you must also know it, understand its appeal,

and find the praiseworthy as well as the bad. And you must appreciate that didacticism is not the soul of art. Too many Republicans use popular culture only to signal their alienation from the country they seek to govern.

4) Love America. Republicans have lost their appreciation of the American spirit of enterprise, adventure, creativity, and individualism. That's why they went wrong on immigration, which they saw as an act of invasion and freeloading rather than an affirmation of opportunity, enterprise, and hope. It's also why such visible spokesmen as Bill Bennett go around denouncing TV commercials that say, "Sometimes you've got to break the rules." The inability to distinguish between morality and mindless conformity corrodes genuine virtue. It celebrates obedience over conscience and bureaucracy over entrepreneurship. It's also Election Day suicide. America is not a nation built by people who deferred to authority. Republicans used to know that.

These are not libertine positions. They say nothing in defense of perjury or sordid affairs with interns. They offer plenty of room for moral judgments—indeed, by requiring distinctions and proportionality, they demand a more serious morality. What they don't do is uphold authority as a central political value or insult the character and intelligence of voters. They don't treat government as something done to us by our betters.

It's tough to top Bill and Hillary Clinton for finger-wagging sanctimony, insufferable elitism, and crass political pandering. But the Republicans have managed to do so. And for that they deserved to lose.

The Slave and the Intern

Jefferson's hypocrisy—and Clinton's

By Nick Gillespie

If history isn't quite James Joyce's nightmare from which we cannot awake, it is nonetheless replete with uncomfortable memories from which we can never fully escape. So in a sense, it's not surprising that in the midst of William Jefferson Clinton's presidential sex scandal we should learn of seemingly irrefutable evidence that Thomas Jefferson—the Founder responsible for the most memorable articulation of the American ideal of liberty—fathered at least one child with a slave mistress. Nor is the revelation particularly shocking. It simply adds to the never-in-doubt, scandalous paradox that was Jefferson's life: How could the man who wrote, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness," himself trade in human flesh?

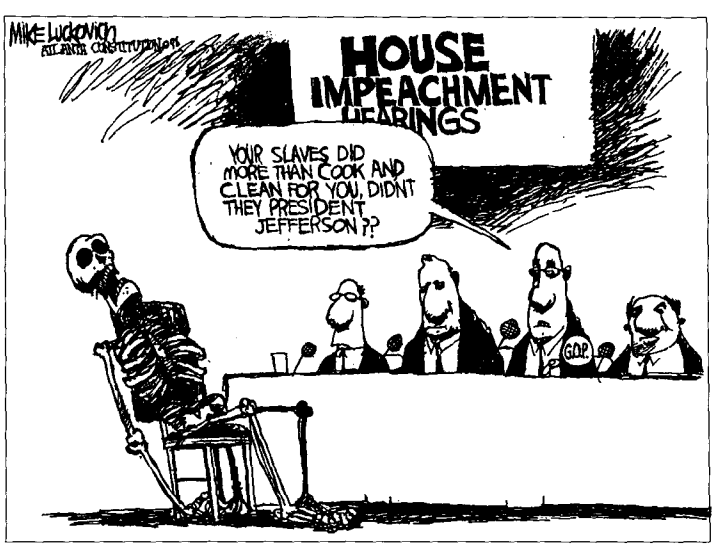
The conclusion about Jefferson's paternity, reported recently in *Nature*, is based on DNA samples taken from descendants of the third president and his slave Sally Hemings; genetic tests show that the Sage of Monticello was the father of Hemings' youngest son, Eston, born during Jefferson's second presidential term. While the *Nature* study settles a longstanding and hotly contested historical matter, it also refocuses the debate over the intersection of public and private morality, a key issue in the current presidential scandal.

"Now, with impeccable timing, Jefferson reappears to remind us of a truth that should be self-evident," argue geneticist Eric S. Lander and historian Joseph J. Ellis in a commentary that also appeared in *Nature*, "Our heroes—and especially Presidents—are not gods or saints, but flesh-and-blood humans, with all of the frailties and imperfections that this entails." A signer of the much-publicized petition urging Congress to halt impeachment proceedings against the president, Ellis, who won a National Book Award last year for *The American Sphinx: The Character of Thomas Jefferson*, seems particularly interested in undercutting charges against Bill Clinton. As he and Lander write in *Nature*: "There is a world of difference between a slave and master at the close of the 18th century, and a White House intern and a married man at the end of the 20th."

That there's a gulf separating Jefferson's bedding a slave—who, by law, could not have technically given her consent and certainly could not have withheld it—and Clinton's consensual affair is unquestionable. There's something appallingly flip in the way in which Lander and Ellis invoke such a mismatched parallel.

Jefferson's actions—owning slaves, denying his paternity of them, refusing to manumit all of them even upon his death—are unendingly disturbing by the very standards he articulated in the Declaration, the document which assures his central importance in American political philosophy even as it marks him a moral failure of the first rank. (Apologists who suggest that Jefferson and other Founders felt powerless to dissolve the institution of slavery are being ahistorical: The possibility was widely debated, even in the South, throughout Jefferson's lifetime.)

In fact, knowing the full extent of his relationship with Sally Hemings retroactively doses Jefferson's work with so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President and Publisher Robert W. Poole Jr. *(bobp@reason.com)*

Editor Virginia Postrel *(vpostrel@reason.com)*

Senior Editors
Charles Paul Freund *(cpf@reason.com)*
Nick Gillespie *(gillespie@reason.com)*
Jacob Sullum *(jsullum@reason.com)*

Managing Editor Rick Henderson *(rhenderson@reason.com)*

Washington Editor Michael W. Lynch *(mlynch@reasondc.org)*

Assistant Managing Editor Mariel Garza *(mariel@reason.com)*

Editorial Assistants Robert Honrado, Mary Toledo

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Art Director Barb Burch *(bburch@reason.com)*

Webmaster Brian J. Taylor *(webmaster@reason.com)*

Reason Express Writer Jeff A. Taylor *(jtaylor@reason.com)*

Contributing Editors
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Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Public Affairs Director Mike Alissi *(malissi@reason.com)*

Circulation Director Alyssa Garey *(agarey@reason.com)*

Assistant Publisher Michael Orendy *(michaelo@reason.com)*

Volunteer Anthony Brown

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395
(letters@reason.com)
(permissions@reason.com)

Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187

Advertising Sales
The Townsend Group, Inc.
7514 Wisconsin Ave., #350
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(ads@reason.com)

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much grotesque irony that it is almost unreadable. In *Notes on the State of Virginia*, he argued, "If a parent could find no [other] motive...for restraining intemperance of passion towards his slave, it should always be a sufficient one that his child is present." In 1789, he wrote, "To give liberty to, or rather, to abandon persons whose habits have been formed in slavery is like abandoning children." In 1809, he categorically declared, "Because Sir Newton was superior to others in understanding, he was not therefore lord of... others."

Contrary to Lander and Ellis, the lesson to be drawn from Jefferson's private life goes far deeper than an acknowledgment that our public figures have feet of clay: It is also that—at the very least—we are right to hold our leaders to the standards they themselves set. If Jefferson's private actions are unredeemable, we know that is partly because his Declaration's "laws" are unassailable. Indeed, they helped undergird the moral case against slavery. His hypocritical behavior is hardly beside the point in assessing his character and his place in history. In fact, it's absolutely central to the task.

So, too, with Bill Clinton. The particular "frailties and imperfections" that led to his consensual tryst with Monica Lewinsky are less important ultimately than the gap between his public philosophy and his private life. Elected in the Year of the Woman, and widely (and rightly) hailed for his seemingly egalitarian marriage, he has publicly humiliated his wife; proclaiming that his would be the "most ethical" administration ever, he has engaged in perjurious machinations and other apparent abuses of power, ranging from the inappropriate accessing of FBI files to violating campaign-finance regulations he himself supports.

Given the recent election and the resulting GOP shakeup, it's unlikely that the president will face a serious impeachment probe, much less removal from office. In his last two years, he can focus once again on his "legacy," with which he was reportedly obsessed before l'affaire Lewinsky hit the papers. But Clinton, like Jefferson, will likely find history a much tougher test than the most partisan congressional investigation. And given the incongruity between his beliefs and his actions, he will have no one to blame but himself.

Credit Where It's Due

Is the credit card market insufficiently competitive?

By Michael W. Lynch

In 1970, National BankAmericard Inc. emerged from the accumulating red ink of BankAmericard, the world's first bank card, which was struggling in a fiercely competitive and quickly evolving marketplace. The company that would later be renamed Visa is structured so that its member banks (also its owners) compete with each other for customers, innovating the services and terms of individual credit cards. Through their joint ownership of Visa, these banks cooperate on issues such as merchant payment systems, fraud protection and brand promotion.

"Visa has elements of Jeffersonian democracy, it has elements of the free market, or government franchising—almost every kind of organization you can think about," Dee Hock, Visa's founding CEO, told *Fast Company* magazine in 1996. "But it's none of them."

Visa may soon add one more element to its mix: Bill Clinton's Department of Justice. On October 7, the DOJ filed antitrust charges against Visa and MasterCard in federal court, alleging the two credit card giants, which have overlapping ownership in an arrangement referred to as a "duality," conspire to squash competition and limit innovation.

On its face, the claim that America's credit card market lacks competition is absurd. More than 6,000 banks alone compete to provide consumers with Visa. Leave town for a week, and the pile of mail awaiting you upon your return will consist of catalogs and credit card solicitations, most pre-approved with low introductory

interest rates or no annual fees. "Anyone can get a credit card," says American University business historian Thomas DiBacco, "even dogs."

True to Hock's vision, banks compete vigorously to provide consumers with spending power. They vie not only with each other but also with other credit-issuing institutions. When I bought a laptop computer recently, my Visas, MasterCards, and Discover card stayed in my wallet; Best Buy financed my purchase for a year, interest free. I now have a Best Buy card to add to my Macy's, Nordstrom, and Ann Taylor store cards.

Even if you grant the DOJ's claim that Visa and MasterCard, for practical purposes, operate as a single entity, there are still plenty of sources of competition and innovation. American Express is accepted by 2.1 million merchants, and Discover by 3.1 million, just 10 percent fewer than accept Visa and MasterCard. And with a deluge of solicitations, the only reason someone doesn't carry Discover or American Express cards is because she chooses not to.

But the Clinton Department of Justice doesn't see it that way. "American consumers have lost out," Attorney General Janet Reno said upon filing the suit. "They have lost the benefit of vigorous competition between the two largest credit card networks, which means that they have not enjoyed the innovation that competition brings."

Short on innovation? My grocery shopping earns me frequent flier miles on a card I pay nothing to use. I amassed a down payment on a G.M. car I never bought with my G.M. card while subsidizing my motorcycle's gas with my Shell MasterCard. Several of my cards will insure my car rentals.

But the DOJ brushes these issues aside. It has decided that Visa and MasterCard haven't come to market with the right innovations—smart cards, commercial cards, and secure transactions over the Internet. While it does not dispute that banks compete for consumers in what it labels the "downstream market," Justice contends that the cooperative governance in Hock's concoction limits innovation at the network level. The same banks now own both Visa and MasterCard, which between them have 75 percent of the market—50 percent Visa and 25 percent MasterCard. The DOJ maintains that the two titans enjoy a détente, a contention it supports with a series of executive quotes such as this one from a MasterCard executive: "It is clear that because of duality you don't see MasterCard and Visa in the marketplace attacking each other." DOJ has also zeroed in on Visa and MasterCard's bank contracts that prohibit institutions that issue either or both cards from also issuing Discover or American Express, a practice known as exclusive dealing.

It's unclear that consumers are actually hurt. And even if we are, in some abstract sense, it is even more unclear how the government is going to improve our lot. This becomes apparent when examining the DOJ's proposed remedies: "that banks governing an association be dedicated to one particular network" and the "removal of exclusionary rules."

If the problem is exclusive dealing, then the solution is to allow banks to own or contract for any card they want, the second of the government's remedies. Exclusive deals aren't evil per se; a person's right to contract is also the right to exclude. And the economy is rife with exclusive deals. Anheuser-Busch distributorships won't deliver Coors. Nor is one likely to find Coke and Pepsi flowing from the same fountain. But exclusive deals can be anti-competitive. In fact, the government took this position in the early 1970s, when it refused to support Visa's prohibition of member banks issuing MasterCard. That this position led to the current "duality" is irony lost in the current DOJ filing.

But in the government's eyes, the real problem afflicting consumers seems to be the lack of innovation, which results from a *lack* of exclusive dealing. Since banks can offer both cards, Visa and MasterCard have a chance to collude. The government's solution can't be to let Discover and American Express join the collusion club. That would defeat the whole purpose.

The solution, as recognized in the DOJ's filing, is a form of exclusive dealing: Make each bank choose a card and stick with it, or at least restrict its management interests to one card. This is pregnant with unintended consequences, the most portentous of which is making Visa, which now accounts for half the market, become even more dominant, as banks choose to stick with the industry leader. That, of course, would invite more government supervision, as Visa might soon find itself in Microsoft's market-share territory.

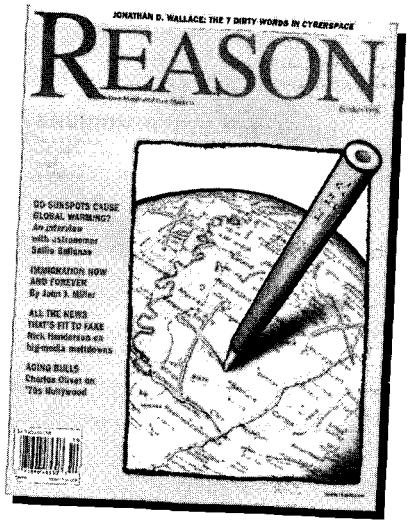
"For the life of me I can't figure out how this is pro-consumer," David Robertson, president of the *Nilson Report*, which tracks the credit card industry, told *The New York Times*. "This is a fabulous time for card holders right now."

In the end, the suit is not pro-consumer but pro-government and pro–American Express and Discover, which long to form their own partnerships with banks and which feel that their innovations—the gold card in American Express' case and rebates in Discover's—are unfairly co-opted by the giants. The government's solution, muddled in its purpose, would only prepare the field for more government intervention. For Clinton's antitrust technocrats, who seem to know what innovations the market should produce, that may be the point.

REASON NEWS

■ **Attention college students:** REASON is accepting applications for the 1999 Burton C. Gray Memorial Internship. The intern works at least 10 weeks in our Los Angeles office and receives housing, a stipend of $2,000, and up to $400 in travel expenses. The job includes reporting and writing for REASON, helping with research, proofreading, and other magazine-related tasks. To apply, send your résumé, up to five writing samples, and a cover letter to Gray Internship, c/o Mariel Garza, REASON, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034. The deadline is **March 1, 1999.**

■ After nine years at REASON, including five as our Washington editor, Managing Editor Rick Henderson departs after this issue. He's becoming national issues editor at *Investor's Business Daily*. Rick will be editing the newspaper's front-page lead story and contributing editorials and other articles. We wish him well.


JONATHAN D. WALLACE: THE 7 DIRTY WORDS IN CYBERSPACE
REASON
DO SUNSPOTS CAUSE GLOBAL WARMING?
An interview with astronomer Sallie Baliunas
IMMIGRATION NOW AND FOREVER
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Charles Oliver on "The Hollywood

Is Immigration Permanent?

John J. Miller offers a fine overview of recent policy making in "The Politics of Permanent Immigration" (October). But his conclusion that high levels of immigration are unassailable—and might soon be increased—is less reliable.

To begin with, the intellectual consensus regarding the benefits of immigration is changing. Converging research findings from the National Research Council, the RAND Corporation, the Urban Institute, the Center for Immigration Studies, and elsewhere reveal deep problems caused by current immigration policy, overturning the assumptions of immigration as an economic and fiscal free lunch. Just as in other areas—welfare reform, school choice, and airline deregulation come to mind—this new thinking on immigration will take time to percolate into politics, but percolate it will.

Furthermore, there are inherent political contradictions within the high-immigration united front Miller describes. Many of the libertarian and business-oriented members of this coalition combine pro-immigration views with an anti-immigrant animus, manifested most luridly in the dogged efforts of Sen. Spencer Abraham (R-Mich.) and others to deny welfare benefits to legal noncitizens. But this view of immigrants as disposable commodities is also clear in the push to increase the number of indentured computer programmers and in the refusal to aggressively pursue worksite enforcement, thus tempting foreigners to risk their lives illegally crossing the border.

And it is precisely this anti-immigrant sentiment, not differing views on the level of immigration, which has turned some immigrants off to the Republican Party. Sen. Abraham and his allies on the high-immigration right are thus part of the problem for the GOP, not the solution.

We could see the emergence of a pro-immigrant, low-immigration coalition that is not a shill for business but rather serves the interests of individual Americans and Americans-to-be. It may not happen, but Miller was wrong to ignore the possibility.

Mark Krikorian
Executive Director
Center for Immigration Studies
Washington, DC

John J. Miller replies: For a political movement to succeed, first it needs intellectual leadership, then a constituency. Mark Krikorian's Center for Immigration Studies is certainly laying the foundations for the former; supporters of high admission levels ignore its serious and substantive scholarship at their peril. On the other hand, Krikorian's imagined "pro-immigrant, low-immigration coalition" is far from a political reality. A severe economic downturn might change that, but even then its success wouldn't be assured.

Contradictions surely exist within the so-called right-left (i.e., business-ethnic) pro-immigration alliance, but they're a sign of majoritarian strength. If restrictionists ever rise to ascendancy, they'll have their own contradictions to fumble over, such as combining the interests of Democrats concerned about how immigration hurts the economic opportunities of low-income Americans and Republicans worried about cultural and political disruption. These fissures already exist in the environmental movement: Some greens believe immigration cuts are necessary to keep population growth in check, and others see these cuts as, at best, a subtle form of racism. In the meantime, the restrictionists are a minority voice among the political elite. That may be a good or bad thing, depending on your point of view. But it's a hard fact.

Markets and Media

I appreciated Rick Henderson's recent piece about the power of market forces to improve accuracy in reporting ("Discovery Channels," October). I was reminded of the infamous lack of veracity which characterized the state-owned media of the USSR. The "owner" and managers of those outlets valued their "journalists" chiefly for their fiction-writing talents.

So it would seem that eliminating all competition from the "media marketplace" results in eliminating all but accidental or trivial truths as well. To the extent that a few large conglomerates come to own America's media outlets (reducing competition among those outlets), accuracy in their reporting will undoubtedly suffer as well—wouldn't you suppose?

Mark Seecof
marks@writ.com

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Los Angeles, CA 90034-6064

Rick Henderson replies: Mark Seecof is correct to note the inaccuracies that riddled journalism in the former Soviet Union, and that continue to plague state-run news media in other countries to this day. The American system of constitutional speech protections and our relatively free market should prevent the problems of concentration he is concerned about. If the Gannett chain decides it wants to buy an independent local newspaper, it doesn't execute the publisher and the editorial staff; it offers them money, which they can choose to accept or reject. As long as people are free to enter the marketplace, it doesn't matter how many media outlets Rupert Murdoch or Ted Turner own; the truth will get out.

Republicrats Shun Reform

In "Not-So-Radical-Republicans," (July), Stephen Moore unfortunately focuses on the Republicans' failure to engage in serious budget cutting. This criticism is valid. The budget reflects a principle of governance—from the conservative view, that of a lean, minimally intrusive government—not an end in itself.

The 1997 budget agreement showed clearly that the Republicans in Congress are in essence no different from the Democrats when it comes to the expansion of government and the redistribution of income. For all practical purposes, we have a one-party system in this country, one in which the personal power and job security of incumbents takes precedence over the best interests of those who elected them.

While Moore suggests that term limits and tax limitation measures would bring about necessary institutional change, he does not say how to achieve these reforms. Indeed, in talking about changing the rules of the game, rather than trying to outplay the other side, Moore seems oblivious to the fact that there is *no other side.* Not only are the Republicans in Congress no more interested than the Democrats in term limits and tax limitation measures—or in campaign finance reform, which Moore does not mention—but members of both parties are doing whatever they can to solidify their positions against challenge.

For example, it appears to be a bipartisan belief that it is not in the public interest to provide free broadcast time for candidates who are not from one of the "major" parties. I find it difficult to believe that true reform is possible without a thorough reform of both intra-party governance and ballot access at the state and local level. Unless there can be a grassroots takeover of the party machinery on a broad scale (which the religious right has begun to do effectively), and a real threat from a third party that is able to attract viable candidates, we will find ourselves yielding more and more of our wealth and our autonomy to government authority.

Richard Lange
Rockhall, MD

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Draft Dodgers

By Rick Henderson

The Cold War may be over, but it looks as if the peace dividend has vanished. Congress sent the Pentagon $271 billion in the budget it passed in October, $8.4 billion more than the budget resolution ratified a few months earlier. And with all the armed forces complaining about outdated weapons systems and shortages of spare parts, a "readiness" problem just about guarantees a new boom in military spending.

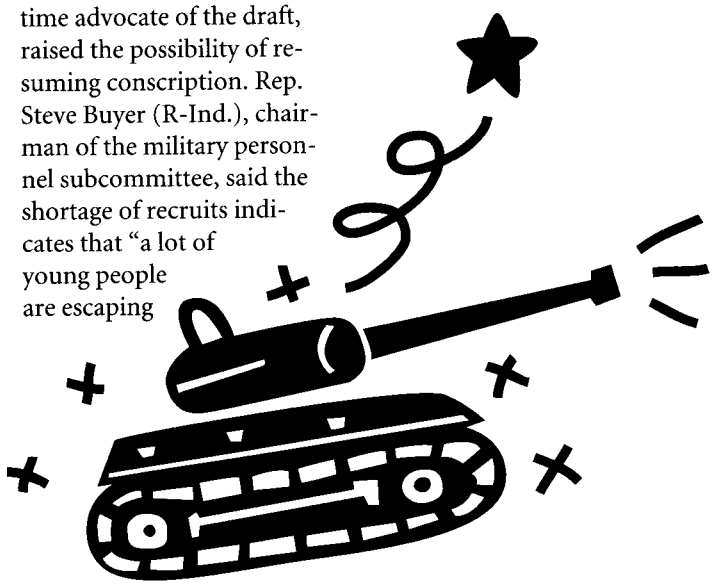
The services are also griping about a shortage of recruits: The Navy says it will fall 1,700 recruits short this year; the Air Force expects a deficit of 900. And a small but influential group of legislators is pushing a bad idea that refuses to die: reinstating the draft.

At a September House National Security Committee hearing, Rep. Norman Sisisky (D-Va.), the ranking Democrat on the military readiness subcommittee and a longtime advocate of the draft, raised the possibility of resuming conscription. Rep. Steve Buyer (R-Ind.), chairman of the military personnel subcommittee, said the shortage of recruits indicates that "a lot of young people are escaping their civic responsibilities. There are benefits to a draft."

Fortunately, the armed services steadfastly oppose it, and they made their sentiments clear at the hearing. Representatives from the Navy and the Air Force said they could fill their ranks with recruits if Congress would raise service members' pay.

Chris Hellman, a policy analyst at the Center for Defense Information, says the all-volunteer forces are merely facing the same labor shortages that affect the economy as a whole. The shortfalls are "cyclical, linked to the health of the economy" and can easily be addressed through "appropriate incentives and bonuses" for recruits, he says.

Despite what Hellman calls "zero support" for reinstituting the draft, debating conscription does serve a political purpose: It allows Congress, the White House, and the Pentagon to avoid discussing the appropriate role of the American military in a post–Cold War world. Meanwhile, U.S. forces continue to engage in open-ended missions in Europe, the Persian Gulf, the Balkans, and Korea.



Balance Sheet

By Rick Henderson

ASSETS

▲ **Pro-Choice.** That gasp you just heard came from the education establishment. By a vote of 8–1, the U.S. Supreme Court lets the Milwaukee school voucher program go forward. More than 6,000 low-income students will use $5,000 vouchers to attend any religious or secular school.

▲ **Fast Living.** After Congress let states set speed limits in 1995, the National Highway Traffic Safety Administration issued frantic press releases saying higher speeds would cause an additional 6,400 traffic deaths a year. But driving is safer than ever: NHTSA reports the 1997 highway fatality rate was the lowest recorded, 1.6 deaths per million miles driven, down from 1.7 in 1996.

▲ **Stemming Disease.** Researchers use discarded fetal materials to grow "stem cells"—basic cellular matter that can be converted into bone, muscle, neural, or any other tissue. People with systemic illnesses such as cancer, diabetes, and Parkinson's disease may soon generate healthy tissue from their own cells rather than needing donors or synthetic substances.

▲ **Cyberspace Jam.** U.S. District Judge Audrey Collins allows the next generation of portable sound recorders to reach consumers. Collins OKs the release of the hand-held Diamond MP3 player—a $200 device that can store up to an hour of digital music downloaded from the Internet. Recording companies gripe about piracy, but Collins considers the MP3 similar to a cassette player and makes Diamond rather than individual consumers responsible for paying royalties to copyright holders.

Frog=Beer=Woman

By Charles Paul Freund

Do you find the Budweiser frogs diverting? If so, some advertising analysts think you could end up a desperate drunk, especially if you're a teenager.

Alcohol advertisement researcher Joel Grube discussed the appeal of the beer-loving frogs at a recent meeting of the American Academy of Pediatrics in San Francisco. "The more kids like the ad," he said, "the more likely they are to be drinkers and the more often they drink."

Grube's beliefs were reported on CNN, which showcased a chorus of other analysts who think teenagers drink because they are exposed to beer commercials on television. These researchers say the industry intentionally associates its product with images that appeal to young people, luring them to drink. Indeed, since the capture and execution of Joe Camel, the Budweiser frogs have vied with fatty-food pitchclown Ronald McDonald for the role of Children's Enemy No. 1.

An ad "deconstructionist" named Peter DeBenedittis offered CNN this psychological exegesis of beer ads: "The beer and the alcohol is the woman. If you'll just drink, you'll get these things." DeBenedittis knows otherwise: "The reality is, if you drink, you'll be desperate, miserable, and lonely."

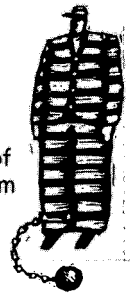
DeBenedittis' theory of beer's eroticization and Grube's theory of beer's juvenilization appear to be in

▼ **Gumbo Gunners.** New Orleans becomes the first major American city to sue gun makers for producing "unsafe" devices under product-liability law. (See "Smoking Guns," July.) The powerful *Castano* group, a nationwide alliance of trial lawyers who have brought multimillion-dollar suits against asbestos makers and tobacco companies, will handle the Big Easy's legal work.

▼ **Teen Labors.** A report by the prestigious National Research Council calls for new regulations on kids younger than 18 who work. The group says high schoolers who work at least 15 hours a week are more likely to abuse drugs and alcohol than those teens who don't have jobs. The report also takes a swipe at consumerism, saying many teens don't "need" to work since they spend their earnings on CDs and sneakers rather than "necessities."

▼ **Net Loss.** White House Internet guru Ira Magaziner resigns from the administration. The departure of Magaziner, who attacked encryption regulations and Internet taxes, clears a path for Al Gore's technocrats to dominate Beltway cyberspace policies.

▼ **Slammer Dance.** The United States has 1.7 million persons behind bars, the highest total of any nation. And the prison population has quadrupled over the past quarter century. Around one-fourth of prisoners are serving time for drug offenses, up from 9 percent in 1986.



LIABILITIES

conflict with each other. But DeBenedittis' approach is worth pausing over because it is almost as nostalgia-ridden as his view of Demon Rum.

Ad critics and practitioners all used to believe in the motivational power of sinister "hidden persuaders" that could make us buy any product at any price. At mid-century, for example, Ernest Dichter helped shape the Betty Crocker image based on his view that when a woman baked a cake for a man, she was offering him a symbol of fertility. Dichter in turn was studied by critics who feared that he was on to a certain Freudian something.

Theoretical disputes aside, Betty Crocker products sold well, perhaps mostly because people have long liked to eat cake. Perhaps teenagers have a similar relationship with beer.

Greener, Not Warmer

By Michael W. Lynch and Jeff A. Taylor

A funny thing seems to be happening on the way to global warming: The instrument of our destruction is fading away. Several million tons of carbon dioxide, a major greenhouse gas that is supposedly on the increase, have gone missing for the last two decades.

Less than half of the carbon dioxide that fossil fuels annually belch into the atmosphere remains there. Oceans absorb roughly a third, and the rest apparently just disappears from the ether. According to a study by a team of seven scientists in the October 19 *Science*, a North American "carbon sink" consisting of the continent's forests and plants may be absorbing up to a quarter of the carbon. That's more than the entire fossil-fuel–produced carbon output of the United States and Canada combined.

So North America may actually be contributing to a net reduction in atmospheric carbon. And if the carbon is absorbed by growing forests and formerly fallow farmland, it means that industrial activity is causing the continent to get greener, not warmer.

Global warming believers have been quick to challenge the findings. Some point out that such a large reduction is hard to square with another apparent sink in South America. Others question the stability of the researchers' models.

Some are more worried about the political implications. "We are all concerned that people will find it convenient to accept the result," ecologist David Schimel of the National Center for Atmospheric Research told *Science*. He frets that such findings argue against U.S. compliance with the latest global warming treaty, which calls for reductions in carbon ▶

QUOTES

"My fine friends who are perfectionists, each in their own world where they are petty dictators, could write a perfect bill. Those of us who have grown up and matured... understand that we have to work together on the big issues."
—Resigned revolutionary Newt Gingrich, on the $530 billion budget resolution that passed the House by a 333-to-95 vote

"It's without restraint, without shame....[It] finds the soul of the child in the adult. This is not pejorative."
—Former French Minister of Culture Jack Lang, on American culture, in the October 25 *Washington Post*

"'Don't ask, don't tell.' In a single policy Clinton summed up his entire legacy. He made it the law that lying should be a condition of public service. He imposed his own moral vacuity onto the lives of honorable gay and lesbian soldiers."
—Andrew Sullivan, in the October 27 *Advocate*

"Hillary is a tremendous patriot....She's handled the situation with dignity, and with the concept of the greatest good for the country. And I admire that. I think she really is the lady of First Lady."
—Actress Sharon Stone, in the November *Elle*

BRICKBATS

◆ Charlene McCormack has filed a lawsuit against the automotive plant that once employed her. The Tennessee woman is a Pentecostal Christian who thinks that God doesn't want her to wear pants. The problem is that the automotive plant says dresses are a safety hazard, since they can get caught in machinery. When McCormack refused to stop wearing them, she lost her job. She says her firing violates the 1964 Civil Rights Act.

◆ Is the Drug Enforcement Administration winning the war on drugs? The DEA's own books don't help its case. An independent audit found the agency can't "accurately and completely account" for the property it owns, the money it has seized from alleged drug traffickers, or the seized drugs it possesses. The hazards of this poor bookkeeping were highlighted in recent months by the arrests of two DEA workers accused of embezzling millions from the agency.

◆ Hou-Lin Li and Luying Deng were angry when they found their 8-year-old daughter had forged their signatures on a teacher's note and that she had lied to cover it up. They were also miffed when she admitted that she'd lied about losing a ring. So they slapped her once on the face and several times on the arms and legs. A policeman saw the crying girl, asked what had happened, and arrested the parents for domestic battery. Over the objection of child welfare advocates, Chicago authorities decided to prosecute the couple.

Scott Stantis

emissions.

He's right. The findings may well breathe fresh air into global warming debates in the Senate, which has yet to ratify the treaty.

Leak Proof

By Mariel Garza

Thanks to a new over-the-counter test kit, the war on drugs can now be waged in the privacy of one's home.

In October, the Food and Drug Administration cleared the way for U.S. sales of QuickScreen, the first test for illegal drugs available to consumers. Created by Phamatech, a company that develops a variety of clinical home test kits, QuickScreen costs about $30 and comes in two models. One looks for evidence of cocaine, marijuana, opiates, amphetamine, and phencyclidine (PCP) use. The other detects cocaine, marijuana, opiates, amphetamine, and methamphetamine. QuickScreen works similarly to home pregnancy tests: A test strip inserted in a urine sample can tell within 10 minutes whether traces of any drugs are present.

Parents or educators who suspect their children or students are under the influence are expected to make up the bulk of QuickScreen consumers, says a company spokeswoman. But results indicating drug use need to be sent to a designated lab for confirmation and analysis. Because some foods and legal medicines will cause positive drug test results, worried parents may not know right away whether their kids are snorting coke, taking the occasional puff of marijuana, or merely fond of poppy seed bagels. And the FDA warns that people can test positive for marijuana if they have been around heavy marijuana smoke—even if, like our president, they never inhaled.

Limo Limits

By Michael W. Lynch

You might think that starting a limousine service would be a sure bet in Las Vegas, a city that boasts a 24-hour gambling strip, 120,000 hotel rooms, and millions of tourists a year.

But established interests and a pliant state legislature have stacked the deck against entrepreneurs looking to make money by driving people around town in style.

In 1997, Nevada toughened its limousine licensing law and created the Transportation Service Authority, which has the power to impound limos lacking a certificate of "public convenience and necessity."

The TSA regularly runs stings to ferret out gypsy operators. Penalties can include up to $10,000 in impound fees, $10,000 in civil fines, and $2,000 in criminal fines.

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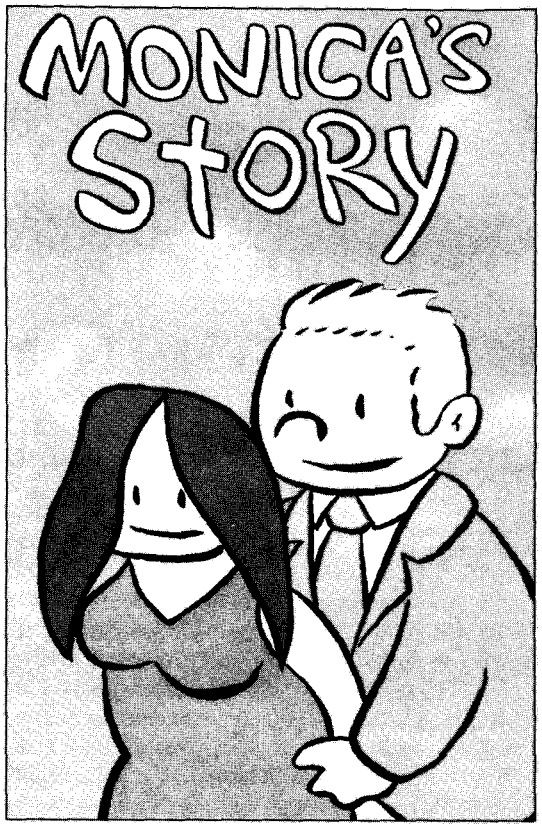


Bill? (Gasp!) Monica? (Sigh!)

Pictured here is the latest work of fiction inspired by the Clinton presidency. *Monica's Story* is the comic-book version of the Starr report; unlike the prosecutorial original, the 32-page graphic version sees not impeachable offenses but true love.

According to the publisher, Alternative Comics, the narrative "takes the reader from Bill and Monica's first stolen glances to the turmoil, tumult and tears of their breakup." The artwork "depicts the rather explicit subject matter in a tasteful R-rated fashion and lends the characters an unexpected innocence." The result is "something dramatic and rather touching."

Monica's Story is thus the first work of Clinton fiction that likes him. *Primary Colors*, the best-known work, presents him as, at best, a disappointment. *Treason in the White House*, an early novel, hangs him on the Mall. *Premises of the Heart* is alleged mistress Dolly Kyle Browning's revenge. *Blood Trail* tries to connect him to Canada's tainted-blood scandal. *Wag the Dog* has become a metaphor for his foreign policy.

Clinton is inspiring foreign artists too. Indian painter Mohsin Shaikh has recently completed a set of canvases based on Clinton's sex life. Shaikh says he's "piqued that a pervert and a liar like Clinton should question the propriety of India conducting nuclear tests," and has answered with art. "My paintings are not aimed at titillation," he told an Indian paper, "but at presenting the truth from an artistic perspective."

—Charles Paul Freund

The typical sting costs an unlicensed limo owner about $5,000, says Rich Lowre, president of the Independent Limousine Operators Association, a 45-member group that opposes the TSA.

Beyond fining clandestine limo services, the TSA has also made it tough for the outlaws to go straight. Getting a license isn't just a matter of purchasing insurance, hiring qualified drivers, and passing a safety inspection, as in neighboring California. Operators must also provide extensive financial information and prove to the TSA that they won't "adversely affect other carriers." And those "other carriers"—er, competitors—have a right under the law to challenge each applicant.

Hence, when John West applied for a certificate in 1997, Las Vegas' largest carriers, Bell Trans and Presidential Limousine, claimed West would "create detrimental competition" and "disrupt economical and efficient service to the traveling public." After a year of paperwork, the three TSA commissioners dismissed West's application nine days before he was scheduled to defend it in a public hearing. One commissioner felt West's application had become "too complicated."

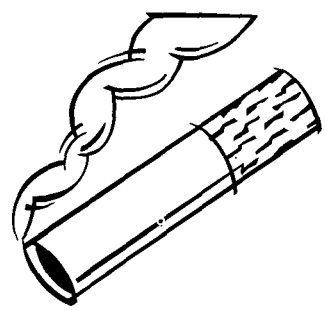
As a result of such actions, West, Lowre, and another operator whose limo was impounded are suing the TSA in state court. Represented by the Washington, D.C.–based Institute for Justice, they are claiming that the regulations violate their constitutional right to earn an honest living. Says Lowre: "I've never been one to go out and fight. But this is an injustice I can't handle." The lawsuit is expected to go to trial by spring.

Joe Blow

By Jacob Sullum

Tobacco's opponents can't resist beating a dead camel. In October the U.S. Centers for Disease Control and Prevention reported that the rate at which teenagers became daily smokers rose by 50 percent between 1988 and 1996. Though the CDC did not mention Joe Camel in its report, it clearly had him in mind: 1988 was the first full year, and 1996 the last, of the ad campaign featuring the droll dromedary.

The press drew the intended inference, running stories with headlines such as "Joe Camel Advent Part of Teen Smoking Rise, U.S. Says" (*Los Angeles Times*), "Teen Smoking Linked to Joe Camel" (Bergen County *Record*), "Ads May Have ▶



BRICKBATS

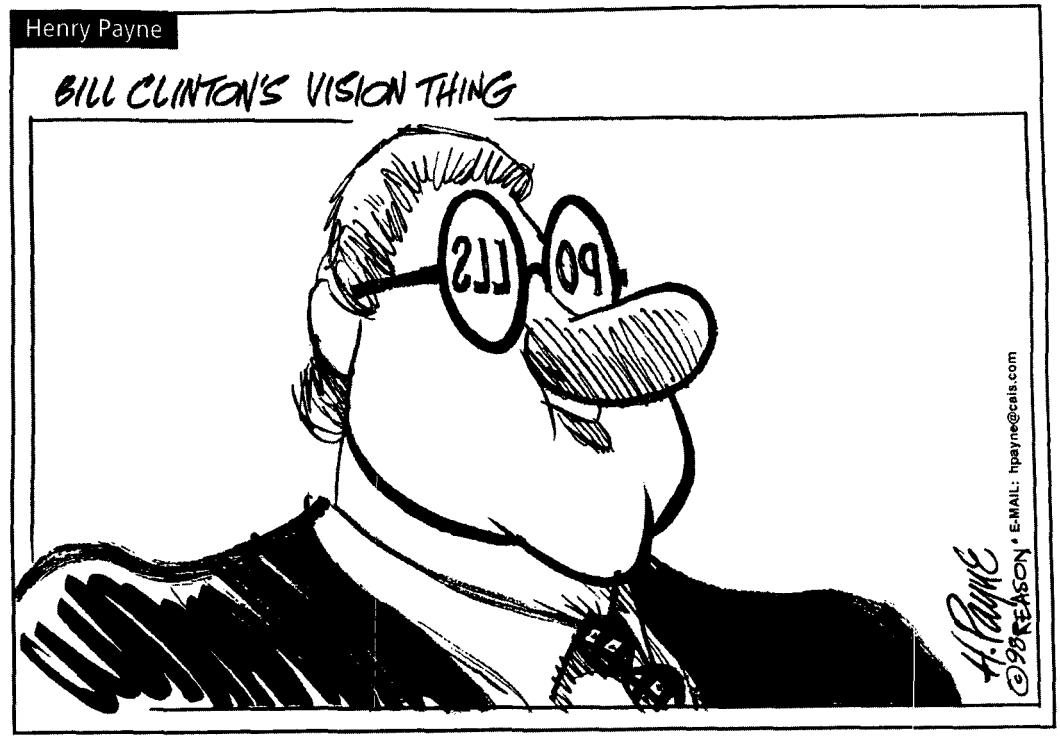
◆ The Patent and Trademark Office currently occupies about 1.7 million square feet of offices. This space must not be sufficient, as the agency will soon approve the construction of a 2.4-million-square-foot building that will cost taxpayers some $1.6 billion. But don't worry; the new building will have everything necessary for approving patents: plazas, sculptures, decorative fountains, and state-of-the-art fitness centers.

◆ Did you hear the one about the scientist who got people to watch the film *Who's Afraid of Virginia Woolf?* while he told them ethnic and sexual jokes? No? Well, you must not keep up with grants awarded by the National Science Foundation. The NSF gave that professor $107,000 of tax money to conduct that experiment. Maybe it could pay a researcher to find out why the government funds such wacky experiments.

◆ George Goodwin knew just what to call it when he was ordered to pay $153 for three parking tickets. The Morristown, New Jersey, man wrote "Legal Extortion" on the memo line of his check. A judge found that remark contemptuous and issued a bench warrant for Goodwin's arrest. That was five years ago, but Goodwin just found out about the warrant this June, when he went to pay another parking ticket. When he did, a check of his record found the outstanding warrant. To avoid jail, Goodwin had to pay $250 bail.

—Charles Oliver

Henry Payne



Spurred Teen Smoking" (*The Atlanta Journal*), "Youth Smoking Soared in Era of Joe Camel Ads" (*The Des Moines Register*), and "Since Joe Camel's Debut, New Teen Smoking Up" (*USA Today*).

But the connection is not quite as clear as these accounts implied. The CDC's estimates were derived from the National Household Survey on Drug Abuse, which asks people the age at which they first tried a cigarette and the age at which they started smoking daily. Based on these recollections, the number of teens who became *daily* smokers did rise fairly steadily between 1988 and 1996. But the number of *first-time* teen smokers followed a bumpier trend, falling after Joe Camel's debut, then rising, then falling again before rising for several years in a row, starting in 1991.

More important than the fluctuations are other data from the same survey that seem to tell a story different from the one preferred by the CDC. The percentage of teenagers who reported smoking cigarettes during the previous month fell steadily between 1988 and 1992, when it started a three-year rise, followed by another dip. By 1996—the endpoint emphasized by the CDC—past-month smoking among teenagers was at the *lowest* level ever recorded: 18.3 percent. The next year, R.J. Reynolds gave Joe his walking papers, and teenage smoking went back up.

Elaine's Closet

By Nick Gillespie

Makers of a contraceptive sponge pulled the popular product off drugstore shelves in 1995 due to Food and Drug Administration pressure (see "Sponge Bath," June 1995). When last heard from, the sponge was a comic subplot on *Seinfeld*: After learning its days were numbered, Elaine hoarded her few remaining devices and demanded that her potential suitors be "sponge-worthy."

But what the government taketh away, the World Wide Web giveth back—in a new and improved form and with discounts for volume purchases, no less. Contraceptive sponges, along with other devices that do not have FDA approval but have passed official scrutiny in Canada and Europe, can be purchased at www.birthcontrol.com, a Web site based in British Columbia. Other items for sale without prescriptions include a one-size-fits-all diaphragm, an IUD, and a Catholic Church–approved fertility monitor designed to assist women employing the rhythm method.

Birthcontrol.com cofounder Heidi Henderson told *Mirabella* the site fills about 100 orders a month, with most originating in the United States. A number of other Web sites conduct similar businesses, and most, like Birthcontrol.com, also offer to sell their wares via fax orders and traditional mail orders.

Despite the lack of FDA approval, U.S. citizens can legally import medical devices (and certain drugs) for personal use, as long as the shipments follow official guidelines. In this case, that means no confidential brown wrappers: Birthcontrol.com's order form warns customers that, in order to pass muster with customs agents, their packages will announce that they contain "birth control devices." The occasional snicker from a mailman, however, seems a small price to pay for wider choice in contraceptives.

Dry Spell

By James V. DeLong

A recent *Washington Post* report bore the headline "Mighty Rivers Run Dry, Hobbling China's Economy." The piece went on at length about China's current water shortage and all its consequences, including tales of cities in which water is on only two hours a day, long lines at water distribution points, lost crops, and decreased industrial production.

After 22 column inches of such tales, the *Post* vouched a possible explanation for the chronic shortages: Until recently, water was free, and even now farmers, who are the biggest users, pay only one-tenth of its cost.

Chinese officials agree that water prices should rise, but no specific plans for this appear to be imminent. Instead, the government is planning vast hydro projects to carve tunnels through mountains, to expend huge amounts of energy pumping water uphill thousands of feet, to build monumental dams, and to displace massive numbers of residents. Its partner—*co-conspirator* may be a more appropriate term—in all this is the World Bank.

Anyone familiar with the history of the great dam building binge in the American West during the earlier part of this century (See "Dam Fools," April 1998) will be overcome with déjà vu. In China today, as in the United States then, the operating principle seems to be that no effort is excessive as long as the government can sever consideration of a project from the discipline of honest market prices.

Another constant seems to be the dominance of the engineering mentality. The American effort was run by the technocrats of the Army Corps of Engineers and the Bureau of Reclamation, who love water projects for the intellectual challenges they pose and the massive beauty of the final product. Chinese engineers seem the same; building 1,500-foot dams and $6.6 billion conduits is lots ▶

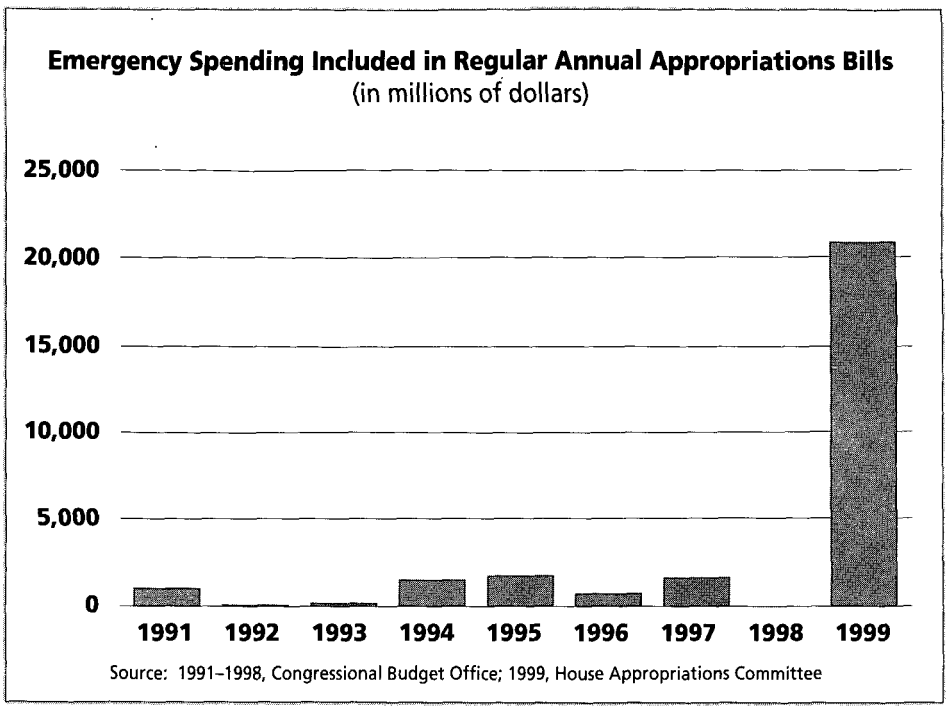
DATA

Continuing State of Emergency

By Michael W. Lynch

When disaster strikes, Uncle Sam likes to lend a helping hand. While the money for such charitable acts is usually doled out as the need arises, some "emergency" spending always finds its way into annual federal appropriations bills.

That's partly because such aid does more than engender warm feelings for beneficent legislators—it lets them spend more money. Since 1991, "emergency" spending has been exempt from budget caps. So this year, when Congress and the president were faced with a $80 billion budget surplus and a presidential promise to save those funds for Social Security, they put their partisan differences aside and declared a $20 billion state of emergency. Among the bill's acts of compassion: $7 billion for the military, $6 billion for farmers, $2.4 billion for embassy security, and $690 million for the drug war. Says Hoover Institution Senior Fellow John Cogan: "[Lawmakers] faced an election. It was a potential personal disaster."



SOURCES

"State-directed capital flows concentrated in a small number of financial institutions and corporations hamper growth....When control over capital is shifted from a few financial institutions to many, it results in an immediate increase in people looking for new businesses to finance."
—From "Capital Access Index: Emerging and Submerging Markets," a Milken Institute policy brief by economists Glenn Yago and David Goldman.

Using 17 indicators, including government debt as a percentage of GDP, allowed foreign ownership, and capital gains tax rates, the authors assess emerging economies in terms of capital access, which they consider "the most salient dimension of a country's economic environment that allows it to realize its growth potential." Singapore tops their list, while Bulgaria brings up the rear. Available on the Web at **www.milken-inst.org/mod18/capacc_contents.html** or by calling **310-998-2600**.

For related measures of economic freedom and competitiveness, check out the Fraser Institute's "Economic Freedom of the World" (**www.fraserinstitute.ca/books/econ_free/contents.html**), the Heritage Foundation's 1998 Index of Economic Freedom (**www.heritage.org/index**), and the World Economic Forum's "Global Competitiveness Report" (**www.weforum.org/publications/gcr/**).

Chip Bok

of fun.

In the United States, sober analysis shows that rather minor increases in prices do wonders to shift water from low-value to high-value uses—and to eliminate the need for billions of dollars in water projects. It seems likely that China, too, would benefit from thinking small—and from introducing some real market discipline.

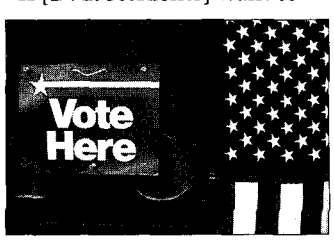
Poll Vault

By Ryan H. Sager

If you thought the only problem with the last budget deal was a lack of tax and spending cuts, think again. Congress attached a rider to the omnibus spending bill to snuff out a medical marijuana ballot initiative in Washington, D.C.

The rider, introduced by Rep. Bob Barr (R-Ga.), prohibited the District from spending any funds in the fiscal 1999 budget on Initiative 59, which would allow the use of pot as medicine upon the oral or written recommendation of a licensed physician. Barr contends that the prohibition extends even to public money used to finance the printing and counting of ballots. Since ballots had already been printed by the time the spending bill was passed, D.C. residents were able to vote on the initiative, which passed with 69 percent support, according to exit polls. But Barr's rider has prevented the vote from being officially counted and certified, a process requiring a negligible amount of public funds.

"The American people don't want federal money used to hold a referendum on the use of mind-altering drugs," Barr snaps when asked why Congress should pre-empt democracy in D.C. "If [D.C. residents] want to hold this kind of initiative with their own money, they are free to do so."



Unfortunately for D.C. residents, they're not allowed to do that. Election results can be certified only by public workers. And since Congress operates the District of Columbia, even local tax money is considered federal money.

Supporters of the initiative, who worked for over a year to get it on the ballot, are mounting a legal challenge to Congress' intervention. The American Civil Liberties Union has gone to court asserting that the rider is "viewpoint discriminatory." Once an initiative process has been created, the ACLU argues, Congress cannot block measures it finds objectionable.

"This isn't Bosnia," says Wayne Turner, the head of ACT-UP, the gay rights advocacy group responsible for getting Initiative 59 on the ballot. "We played by the rules and gathered 32,000 signatures so the people could decide."

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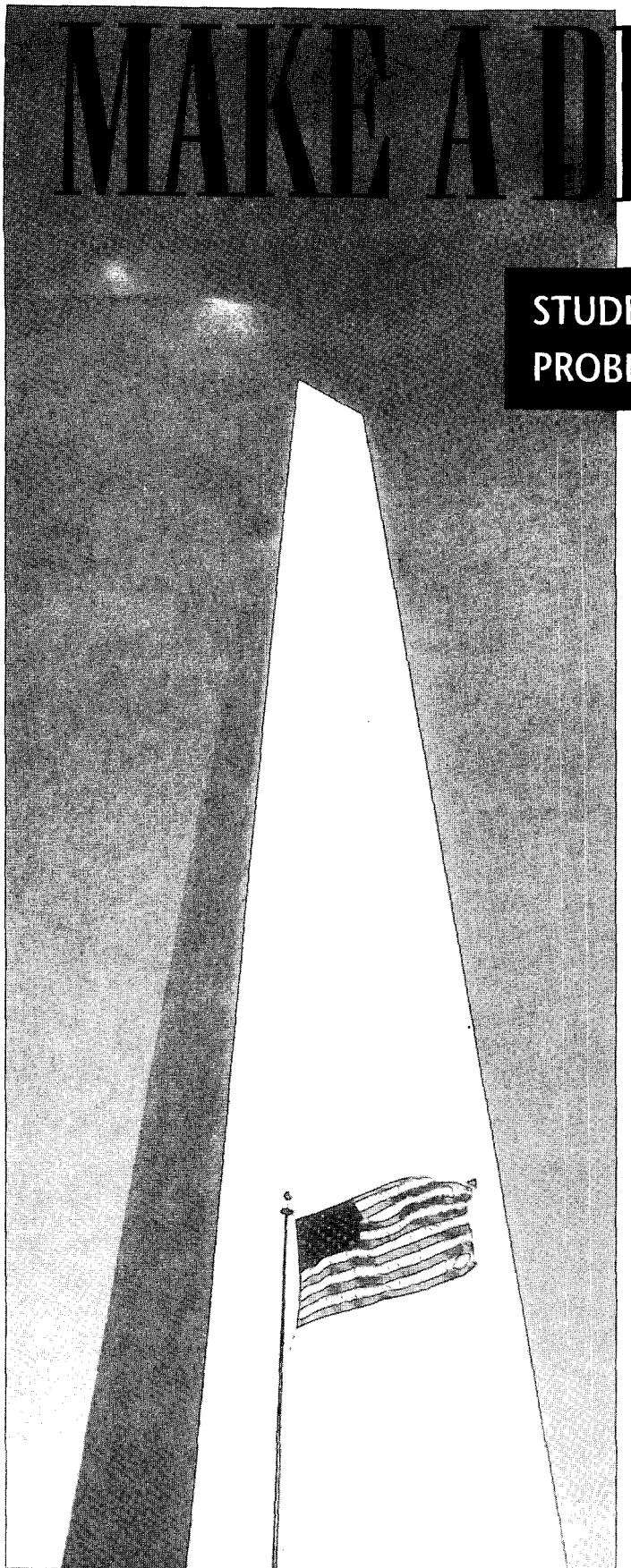

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Coat-Check Time

In which our man in Washington endures Republican Victory rituals.

By Michael W. Lynch

Subj: Omnibus Spin
Date: Fri, October 16, 1998 12:49:15 PM
From: mlynch@reasondc.org

I was sitting at my desk, fact-checking my McCain piece yesterday, when an elated Horace Cooper, press secretary for Dick Armey, called to announce that the Republicans had struck a budget deal with the White House on terms favorable to the Republicans. Tell me about it, I said, as I flipped a page on my reporter's pad and uncapped my Uni-ball micro pen. I was happy to be thought enough of to be on the receiving end of spin. I have never heard Horace as excited as he was rattling off his boss' accomplishments.

A $10 billion increase in defense spending—considered "emergency spending"—with $1 billion dedicated to an anti-ballistic missile program was the first item he shared. Not only will there be no federal money for needle exchanges in D.C., but the Republicans won a ban on needle-exchange funding for the entire country. But I like needle exchanges, I interjected. Horace reminded me, however, that I wasn't in favor of the federal government's funding such pursuits. He had me. (In a conversation today, I asked him if the Republicans would make private needle exchanges legal. We both chuckled at the thought.)

The next series of accomplishments consisted of defensive feats: no money for developing national education tests, no hate crime bill, census sampling to be pushed off for another six months, some prohibitions on international family planning. Horace said Third World women would no longer receive involuntary IUDs, and he mentioned something about forced abortions in China.

"What about the Communications Decency Act II?" I asked. That stayed in. Knowing we had a disagreement, Horace was quick to point out that funding for the Department of Transportation's national ID card was yanked for a year and a proposed gun registry was blocked. The anti-drug propaganda and drug-war armament programs, however, stayed in. And the IMF, according to Horace, will get its $18 billion only after the Treasury Department certifies that it has adopted more open procedures.

Clinton gets his $1 billion increase in education spending, but locals get to decide how it's spent, within some limits. And farmers get $6 billion in emergency relief. In total, there will be $20 billion in emergency spending: $10 billion defense, $6 billion farmers, with the remainder going to the much-hyped Y2K problem and embassy security. (Why are these "emergency" items? So the spending caps aren't officially busted.)

I deemed this a mixed bag at best. I was happy about the ID and guns, but the Republicans seemed once again to have displayed fiscal incontinence while enthusiastically pandering to those who would deny me the freedom to have a good time. So I wasn't surprised by this morning's newspapers.

"This Republican Congress is going home after blowing a hole in the balanced-budget agreement it so proudly announced just a year ago," led *The Wall Street Journal*'s Politics and Policy feature. Not exactly the spin Horace had in mind. The article noted that the "pre-election spending spree" helps define today's conservatism, adding that none of the GOP gains enumerated by Gingrich had to do with "the old order of fiscal discipline," but were in fact "important to the social right."

In his Potomac Watch column, Paul Gigot sniped that if Clinton "gets any weaker, Republicans may pass Hillary's health care plan." *The Washington Post*'s lead article called the deal a "victory for traditional politics," an "election-year political piñata, stuffed with special projects and extra spending for both parties."

Yesterday, Horace said a common Hill analogy characterized Clinton as the place-holding Lucy and the Republicans as the place-kicking Charlie Brown, which seems about right to me. But while Clinton is still the untrustworthy Lucy, argued Horace, it is congressional Democrats who are in Charlie's position, as the president's deal with the Republicans has left them airborne with little to campaign on.

I called Horace today to discuss this idea, since the news reports quoted Democrats praising the president. "They got a great spin operation going on," Horace allowed. But if the Democrats are so happy, he asked, why are they refusing to endorse the deal until they read it?

"Is anybody going to read this before the vote?" I asked. That's precisely his point. Since no one will read it before voting on it, it should be enough that the president supports it. (I checked with a Democratic Hill staffer, who said, "We think it's a good thing. We just don't know what's in it.")

Horace then laid into his defense of the deal, which, in quintessential Washington terms, has everything to do with "our team" vs. "their team." According to this logic, all "their team," meaning the Democratic Party and its sundry bottom-feeding interest groups, got was $1.2 billion for teachers and $35 million for heating fuel

HENRY PAYNE

for North Koreans, two items which aren't likely to motivate their base. "This is not the same as the $25 billion we spent for the radical-left agenda" to get out of town in 1996, Horace said. He was not happy about the IMF money, but at least it's for the "corporate pukes," not for feminists, Hollywood, or unions. The farm aid, which Rep. James Moran (D-Va.), my congressman, characterized in *The Washington Post* as "enough for farmers to buy both of the Dakotas," is bipartisan, as members of both teams count farm votes.

In this team-sport view, Horace is convinced the R-team won. "Corporate pukes" get the IMF money; military folks and contractors get $10 billion; people who go ballistic for anti-ballistic missiles get $1 billion earmarked for just that; social conservatives get abortion restrictions, no drug needles, and cybersex bans; and libertarians don't have to carry a national ID and can keep their guns.

As my conversation with the GOP Spinmaster wound down, our central problem dawned on me: The team that wants the federal government to be neither the keeper of morals nor a largess-disbursing nanny hasn't suited up for the game.

I noted that there's not a lot of spending restraint, to which Horace responded with a "compared to what" scenario. "A $30, $40, $50 billion spending spree. That's what we were looking at," he reminded me, again noting that in 1996 they spent $25 billion to get out of town.

As our conversation wound down, our central problem dawned on me: The team that wants the federal government to be neither the keeper of morals nor a largess-disbursing nanny hasn't suited up for the game.

Horace could tell I am skeptical that anything great has been accomplished, so he offered to help devise a REASON-tailored spin. Think of all the things you didn't do, I suggested. This list includes to-

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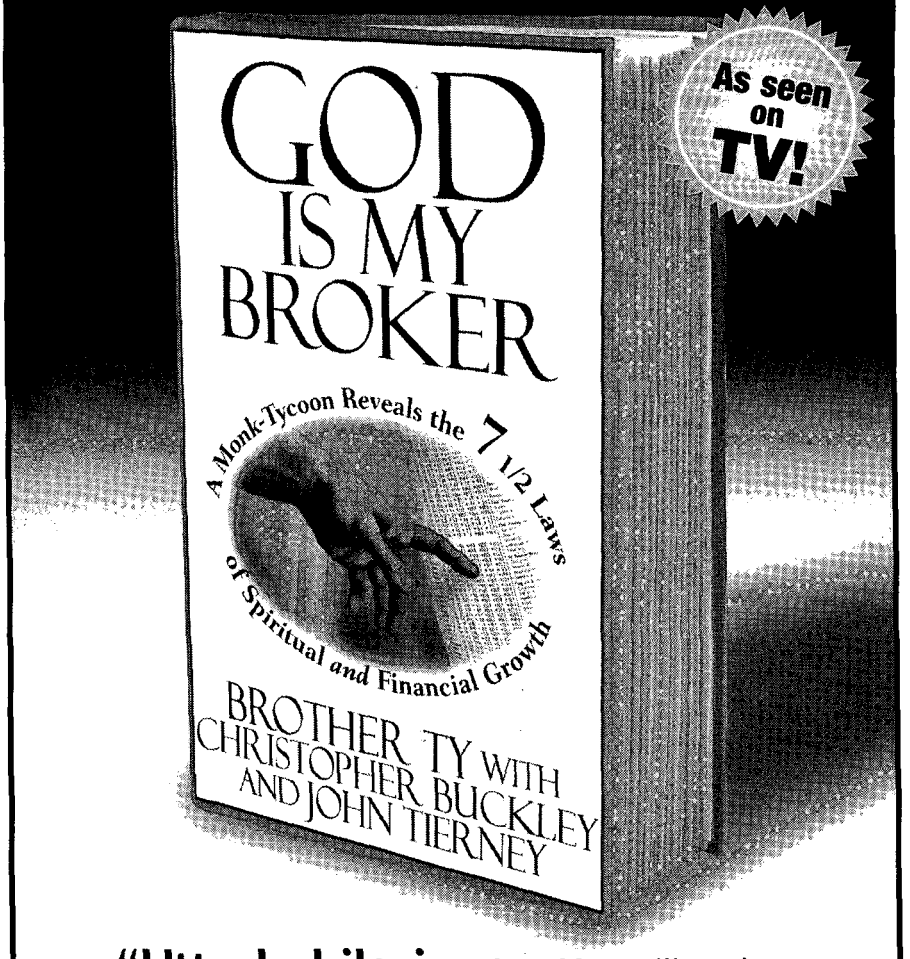
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bacco legislation, speech-censoring campaign finance reform, managed-care regulation, national child care, and hate crimes legislation. If only they didn't have to pass a budget.

Subj: RNC Blues
Date: Fri, November 6, 1998 5:19:38 PM
From: mlynch@reasondc.org

Headed over to the Ronald Reagan Building Tuesday night to experience the election returns at the Republican National Committee's bash. "Maybe you can do an e-mail about it," said the fellow who offered me an unsolicited invitation.

After checking my coat, I found myself in conversation with Scott Hoffman, a free market lobbyist whose latest success is increasing the cap on high-skilled immigrant visas. I looked down on the shiny head of conservative talk show host Armstrong Williams, the night's emcee. As Armstrong introduced Jim Nicholson, the soon-to-be-former RNC chairman, a gang of red-sweatered youth rushed the podium, wearing a look of collective compulsion. (First line on the employment contract of an RNC intern: You must rush the stage and feign interest when Nicholson speaks.)

I don't know what Nicholson was saying, since the acoustics in the Ronald Reagan Building rendered him as intelligible as the grown-ups on "Peanuts" specials. WAH, WAH, WAH, WAH, WAH echoed off walls. Maybe it's better on the floor, Scott offered, so I headed downstairs to pick up a Diet Coke. (Beers were $5 each, and after checking my wallet, I decided to stick with caffeine.)

The acoustics were indeed better on the lower level, a mixed blessing since it meant I could hear an obligatory tribute to Ronald Reagan and the Cold War, a video intended to remind Republicans of happier times. Armstrong told us that Republicans offer a "future of promise, not license, of virtue, not vice," under a banner of "America's New Majority." A second video played, this one intended to convey the debatable notion that the GOP's shrinking majority includes some minorities. Glancing up at the two stadium screens flanking the stage, I saw brown cafeteria workers, a black woman on a porch, and other scenes of Republican-base voters going about their daily activities.

As I mingled on the main floor, I heard Armstrong exhort the crowd not to be depressed by the media's hasty calling of races. It was just half past 8 p.m., and I didn't know any races had been called. I went in search of the TV room.

"I can't think of a close race we've won," said Institute for Justice attorney and avid Republican Matthew Berry, who occupies the office adjacent to mine. Matt was monitoring exit polls throughout the day and had rushed to the RNC bash at 7 p.m. I knew he would have the latest information. "It's going to be a bad evening," he said.

By 8:55 p.m. there was already talk of Gingrich's hold on the speakership. I felt a tap on my shoulder and turned around. "They may lose the House," said *Washington Post* columnist and Reason Trustee Jim Glassman. "Can I quote you on that?" I asked. "They deserve to lose," he replied. "And you can quote me on that."

I felt a tap on my shoulder and turned around. "They may lose the House," said *Washington Post* columnist and Reason Trustee Jim Glassman. "Can I quote you on that?" I asked. "They deserve to lose," he replied. "And you can quote me on that."

I met up with Armstrong, a friend since a junket we took to Switzerland. House Majority Leader Dick Armey, appearing on the *Larry King Show*, hovered on the two stadium screens, looking terrible. I pointed to Armey's image and asked Armstrong if the majority leader would keep his job. "There's going to be some changes," he replied. Perhaps a change worth considering, I thought, would be for you to refrain from goading such figures as Trent Lott to compare homosexuals to kleptomaniacs in television interviews. But somehow I don't think this was a change he had in mind, and I didn't mention it.

Back in the TV room, I ran into an acquaintance who works in the financial industry. "How's the market been?" I inquired, thinking its gyrations might be providing him with headaches not unlike those RNC officials and the congressional leadership would experience tomorrow. "Volatility's good. It gives you something to talk to your clients about," he said. "They think they need you."

As I pulled out a pad to write this down, he got nervous. I asked him about Republican fortunes, priming him a bit with an outrageous remark about, as Chuck Freund recently phrased it, "the paralyzed, piss-poor, pathetic assholes who lead the Republican Party." He's prepping for a political career in about 20 years and wisely didn't bite, uttering instead some Pablum about how well Republicans were actually performing, given the circumstances.

At 10 p.m. the somber TV room erupted in cheers, when the network reported that Sen. Carol Moseley-Braun (D-Illinois) was down, with 22 percent of the vote counted. Republican enthusiasts had hit bottom. They were cheering about barely beating one of the least distinguished and most corrupt members of the Senate, whom nobody ever expected to win. When Gingrich made a video appearance a bit later, the most significant thing he had to say for himself was that the Republicans had beat Sen. Moseley-Braun. He didn't even mention her victorious opponent, Peter Fitzgerald. His spin was entirely negative. "Hasn't he had media training?" a woman next to me asked.

By 11 p.m. things were degenerating. Looking down from the upper level, I watched some rhythmically impaired people dance to "We Are Family." Nicholson was giving an interview to a television crew directly under me. WAH, WAH, WAH, WAH, WAH. I decided to head home.

As I left, the coat check system was in disarray. Staffers were directing disgruntled guests up a stairway, where they were left to search the racks for their own coats. What's the use in being a Republican, I thought, if, after a night of electoral drubbing and $5 beers, you have to get your own coat? It just didn't seem fair.

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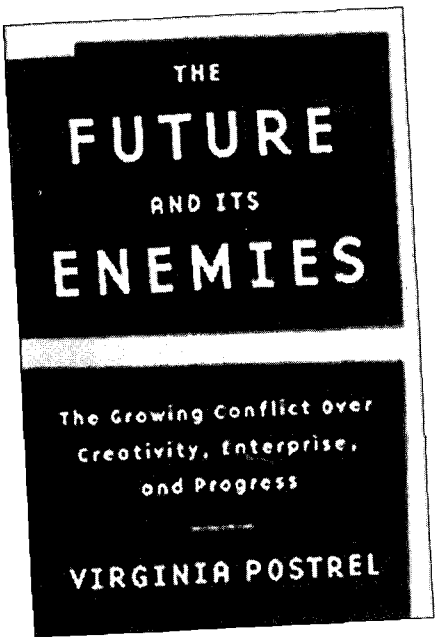

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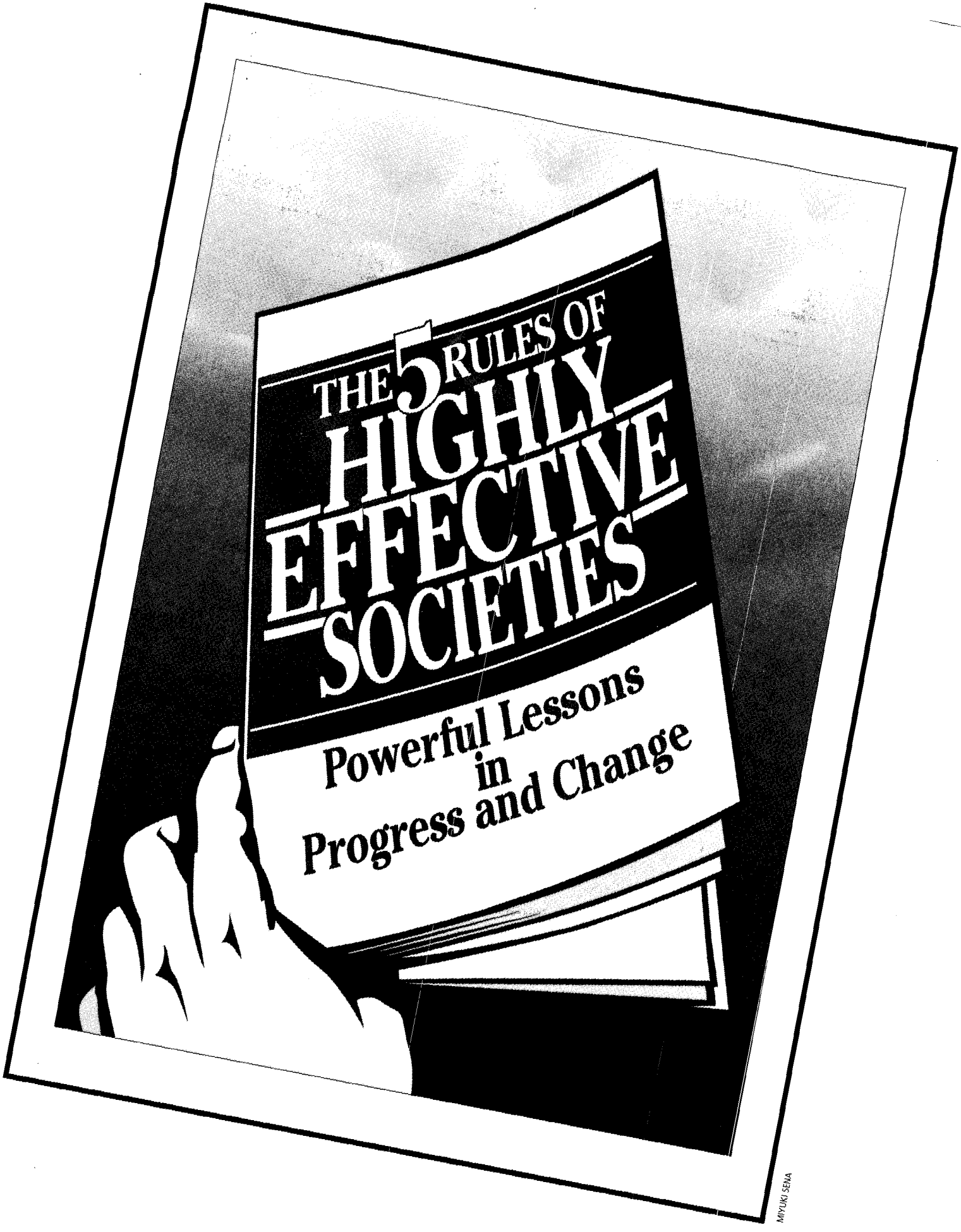
THE 5 RULES OF
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Powerful Lessons
in
Progress and Change
MIYUKI SENA

The Bonds of Life

Society depends on rules. But what sort of rules enliven our world—and what sort stifle it?

OVERHEARING THAT I WAS writing about rules, my 7-year-old niece, Rachel, ran into the room. "I know some rules," she said, rattling them off. Her list is:

1. Look both ways before you cross the street.
2. Check to see how deep the water is before you dive.
3. Don't take others' medicine.
4. Never eat old mayonnaise, or mayonnaise that has been left out of the refrigerator too long.
5. Never bother a big dog when it is eating, or any kind of dog.
6. Never leave a thumbtack where someone will sit on it.
7. Never take a ride with a stranger.
8. Always check over your work.
9. Always tell the truth, or you might get into more trouble.
10. Never look straight at the sun.
11. Check the lights before you put them on the Christmas tree.
12. Always stick with your buddy.

Rachel's rules are the distilled and simplified wisdom of experience, products of the infinite series of trial-and-error learning. Most have exceptions, from accepting a friend's aspirin to politely pretending to like a hideous wedding

BY VIRGINIA POSTREL

present, and we expect to apply them selectively. Rachel's rules assume, rather than override, our personal knowledge. We may choose to violate them, with or without a good reason, and to bear the consequences that naturally follow. (Maybe we're just curious about what happens if you eat old mayonnaise.)

Most of our public debate over rules, by contrast, is about making such detailed prescriptions into mandatory, no-exception laws. These rules are rigid and drained of local knowledge. The consequences of breaking them flow not from the actions themselves—whose results may be neutral or even positive—but from external law enforcement. The rules establish narrowly defined categories for all times and circumstances, hindering progress based on new combinations.

Oppose these confining laws, and you will often be charged with wanting a chaotic society with no rules at all. It's an effective, but nonsensical, argument. Just as biological life would be impossible if chemical processes were arbitrary, so social life would disintegrate if its rules fluctuated unpredictably. The real question is not whether "rules" in general are good or bad. It is what sort of rules are necessary and appropriate.

Like the laws of physics and chemistry, which permit the simplest of particles to form complex combinations, good rules allow us to create the bonds of life—to turn the atoms of our individual selves, our ideas, and the stuff of our material world into the complex social, intellectual, and technological molecules that make up our civilization. Such rules enable competitive processes and effective feedback; they do not dictate results. They change slowly, and their workings are predictable. They are, in the legal scholar Richard Epstein's phrase, "simple rules for a complex world."

There are many dynamic systems in the world, many areas of life that evolve and improve through trial-and-error learning, from "digital organisms" that evolve better computer programs to global financial markets, from adaptable architecture to international science. Looking across these various processes, we can find patterns in their fundamental rules, though we can fully apply those patterns to a specific case only when we understand that particular system. Here we can only begin the exploration by laying out some general principles. As an overview, dynamist rules:

- allow individuals (including groups of individuals) to act on their own knowledge;
- apply to simple, generic units and allow them to combine in many different ways;
- permit credible, understandable, enduring, and enforceable commitments;
- protect criticism, competition, and feedback;
- establish a framework within which people can create nested, competing frameworks of more-specific rules.

These principles are very different from the Rachel-style rules that our technocrat-dominated political discussions have led us to equate with "governance." In fact, dynamist rules apply to a broad array of circumstances, not just to politically enforced laws.

Any dynamic, learning system must follow these principles. But the system itself need not be a global one. It may be nested inside a larger dynamic order: a flexible business inside the larger economy, for instance, or a department within a larger, evolving company. And, as the fifth criterion suggests, within broader dynamic systems, there is also room for more-rigid rules, serving other purposes. If McDonald's wants to make its menus the same everywhere or a basketball coach wants to require his team to stick to one set of plays—in each case, valuing consistency above innovation—dynamist rule making permits that tradeoff too, as long as there is competition.

Personal Knowledge

Once upon a time, the prospect of a "new world" in the Americas inspired political philosophers to think about the state of nature and how civilization evolves out of it. From that philosophy, and inherited legal traditions, came new constitutional regimes and experiments in self-government. Settling new territory requires serious thought about fundamental rules, thought that not only shapes the new world but can reshape the old. This is a matter not simply of philosophy but of practice, since pioneers must evolve new rules to govern the new landscape.

Just as biological life would be impossible if chemical processes were arbitrary, so social life would disintegrate if its rules fluctuated unpredictably. The real question is not whether "rules" in general are good or bad. It is what sort of rules are necessary and appropriate.

That is why cyberspace is more than a technological fad, why its governance has become a contentious legal issue, and why it attracts enormous amounts of comment. The "settlement" of this virtual world has forced its pioneers to consider how and when rules work. Through trial and error, experimentation and competition, they have evolved technical standards, etiquette, and boundaries of various sorts. That computer programs are themselves strings of rules, which in turn depend on more-fundamental rules embedded in hardware or lower-level software languages, means that even a nonphilosophical programmer has a practical knowledge of rule structures. And for the more ambitious, developing the virtual frontier offers a chance to

BLUNT CUT: In 1966, British hairdresser Vidal Sassoon moved to New York and fought taking a state licensing exam, saying, "The test requires...things that haven't been used since Gloria Swanson was in silent movies. It violates everything I've worked for for 21 years." The alternative to honoring such personal knowledge is imposing a false uniformity, a single, rigid model of how the world must be.

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explore and create rules that enable other people to generate rich, dynamic systems of their own.

Back in 1985, when personal computers were strange and wondrous inventions just filtering into American homes, Chip Morningstar and his colleagues created an online world in which Commodore 64 owners could meet, play, and communicate with each other. The computers were simple, the modems slow, but the world—called Habitat—quickly became complex. Habitat provided its users with an animated landscape, props, activities, and cartoon personas called avatars. Users could send each other e-mail or converse through text in word balloons. Working from this underlying structure, Habitat's virtual citizens developed a wide variety of social activities and institutions. They invented games and dance routines, went on treasure hunts and quests, published a newspaper, threw parties, got "married" and divorced, founded religions and businesses, wrote and sold poems and stories, and debated weighty issues.

Watching Habitat develop made Morningstar think seriously about how rules shape societies, and what the limits of rule making are. "It was a small but more or less complete world, with hundreds and later thousands of inhabitants," he recalls. "And I, along with my coworkers, was God." In theory, the programmers made the rules, knew them thoroughly, and could change them at a stroke. But their godlike powers weren't as limitless as they seemed. Says Morningstar: "Again and again we found that activities that we had planned based on often unconscious assumptions about user behavior had completely unexpected outcomes....We could provide opportunities for things to happen, but we could not predict or dictate the outcome."

If there were chinks in the rules, the players found them. A few enterprising souls spent hours shuffling between a "Vendroid" machine selling dolls for 75 tokens and a pawn machine in another region buying them for 100 tokens. When the arbitrageurs had enough profit to buy crystal balls for 18,000 tokens, they repeated the same procedure with a pawn machine paying 30,000 tokens, until the Habitat money supply had quintupled overnight. When questioned about the source of their newfound wealth, they replied, "We got it fair and square!"

"Unintended consequences really have to do with naive people believing that there are no holes [in the rules]. It's very easy to seduce yourself into thinking that you've got everything under control," says Morningstar. "And the reality is, it's almost never true." Clever people will always come up with ideas no central rule maker has conceived.

Over and over again, Habitat's designers ran into the limits of their own knowledge. The range of tastes and knowledge its many users brought to Habitat quickly overwhelmed the ability of designers to foresee how users would react. A treasure hunt that took weeks to build lasted less than a day, after a single Habitat resident quickly discovered a critical clue; the winner had a great time, but most of the other players barely got started. The system's operators soon realized the value of letting users create their own games. "It's not that they could necessarily do things that were as good as some of the things that we had the facilities to do," says Morningstar. "But the things which they did were much more directly in tune with what people immediately wanted—because they were much more directly in contact with themselves."

This, then, is the first characteristic of dynamist rules: *They allow individuals (including groups of individuals) to act on their own knowledge.* They recognize that people are "more directly in contact with themselves" than any rule maker can be. Rules must be simple and general, a foundation on which people can build, not a detailed blueprint for exactly what they must con-

struct. The rules must respect the "knowledge problem," the limits of what any authority can know.

The knowledge problem helps explain why lawyer Philip Howard's prescription in his book, *The Death of Common Sense* —giving bureaucrats discretion to use "common sense" in applying technocratic regulations—may curb some excesses but will eventually break down. To understand the nuances of a situation, to see it from the inside, a regulator would need the very sort of local knowledge that is time-consuming to acquire and difficult to articulate. Even when outside officials sincerely try to balance costs and benefits, they lack the information necessary to make that calculation. It is hidden in the hearts and minds of diverse people with diverse tastes, with many different assessments of costs and benefits.

In 1966, the renowned British hairdresser Vidal Sassoon moved to New York and promptly got into a fight with state cosmetology regulators. Sassoon's precision cuts had freed straight-haired women from the confines of permanents, teasing, and gobs of hairspray, but to practice his trade in New York he was required to take a test based on the sort of hairdressing he hated. "The test requires that I do finger waving, reverse pincurling, and a haircut in which you thin as you cut—things that haven't been used since Gloria Swanson was in silent movies," he said. "I simply cannot take it on the grounds that it violates everything I've worked for for 21 years." Sassoon eventually forced state regulators to promise they'd change the test.

Howard's prescription offers no solution to such conflicts. Many people, including New York state regulators, believed that Sassoon's hairstyles defied common sense. "We're not going to be told what to do by these damn foreigners, especially those Limeys. Over there, you can't tell the difference between the boys and the girls!" declared the head of the state's cosmetology department. Friendlier officials also thought the regulations perfectly sensible. But hairdressers and their customers will always know much more than outside regulators about their own circumstances and preferences. The alternative to honoring that knowledge is imposing a false uniformity, a single, rigid model of how the world must be.

Using "common sense," technocrats still pick winners and, therefore, losers. The "knowledge" at stake is not only information but values, tastes, and individual expression. Three decades after Sassoon's struggles, JoAnne Cornwell, a third-generation hairstylist and chair of the Africana Department at San Diego State University, is suing the state of California for forcing its chemical-oriented licensing requirements on people like her who do only African-style braiding and locking. She believes the state rules "help perpetuate a negative self-perception on the part of women with naturally textured hair: Our hair is wrong. Our hair is bad." To people for whom hairdressing obviously includes chemical treatments, Cornwell's views defy common sense—the sense of the majority.

Rather than specific rules enforced with broad discretion (and hence uncertainty), a dynamic vision calls for general rules on which actors can depend—a reliable foundation on which to build complex, ever-adapting structures that incorporate local knowledge. Some of those structures may themselves be elaborate new schemes of rules. But such specific rules will be voluntarily subscribed to, allowed to evolve, and able to incorporate detailed knowledge of particulars. They will operate as separate, nested systems within the general rules. They should not be confused with the fundamental rules that allow special-purpose rules to develop.

Nested rules that evolve to thoroughly incorporate local knowledge can solve tricky governance problems. The political scientist Elinor Ostrom studies how communities develop effective ways to share "commons" used by many people and owned by no single entity. Grazing land and fishing sites are classic examples of commons. Economic theory predicts that such common property will be overused, since everyone has an incentive to draw as much as possible from it rather than to conserve. But Ostrom finds many examples of cooperative institutions evolving to effectively regulate commons use to everyone's benefit. Many such institutions have lasted for hundreds of years. They have developed through trial-and-error learning, with the rules made by the same people who must abide by them.

In the 1970s, for instance, the fishers of Alanya, Turkey, faced a crisis. Overfishing threatened to deplete stocks and was leading to sometimes violent conflict. Production costs were rising. So, recounts Ostrom, members of the local fishing cooperative began more than a decade of experiments to find a way to assign fishing spots. Eventually, they arrived at a stable solution that preserved both the peace and the fish stocks. It gives each fishing boat two turns at each fishing location over the course of the year and spaces out the sites so nobody blocks neighboring nets. The assignments are essentially self-enforcing, since anyone who tries to steal a good spot out of turn will be caught by its rightful claimant.

Rather than specific rules enforced with broad discretion (and hence uncertainty), a dynamic vision calls for general rules on which actors can depend—a reliable foundation on which to build complex, ever-adapting structures that incorporate local knowledge.

This privately administered system evolved within the broader law: National legislation permits local cooperatives to make such arrangements, and local authorities officially accept the list of site assignments each year. Instead of trying to impose a particular result, the law protected the process by which new local rules could develop peacefully. That law fostered new bonds.

Local knowledge was critical to developing the Alanya sys-

SAN FRANCISCO TREAT: Rather than try to design the city as a whole, San Francisco's turn-of-the-century rule makers created a generic block system. Within the blocks, owners and builders had wide latitude to develop their property to suit their needs and wants. One result was the diverse and adaptable Victorian houses that mark the city to this day.

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tem, which required a great deal of fine-tuning and information about specific sites. "Central-government officials could not have crafted such a set of rules without assigning a full-time staff to work (actually fish) in the area for an extended period," notes Ostrom. "Fishing sites of varying economic value are commonly associated with inshore fisheries, but they are almost impossible to map without extensive on-site experience." The Alanya rules got better over time, as the fishers refined them through trial and error. Designed to solve particular problems by the people affected, this new layer of rules does not need to be simple or general. It has specific goals and is subject to competition, from both Alanya fishers with alternative proposals and other fisheries with different arrangements. Like a new technology, business, scientific theory, social arrangement, or work of art, it is the *product* of dynamic processes.

Generic Units

The shipping container is a marvelous invention. It revolutionized and expanded international trade by allowing goods to move from trains to trucks to ships without ever being unpacked. Containers look alike, regardless of their contents, and they can contain just about anything, from chainsaws to Barbie dolls. They are completely generic.

In their chronicle of how the Internet was built, *Where Wizards Stay Up Late,* Katie Hafner and Matthew Lyon use containers as a metaphor to describe how the Internet's underlying data-transfer rules (called transmission control protocol, or TCP) work. Just as shipping containers can carry anything across varied transportation modes without disruption, so TCP allows "packets" of data to move from network to incompatible network, letting computers of all different sorts communicate with each other. What's inside the "container," or packet, is irrelevant. By providing a way to bond wildly different computer networks, this basic protocol made the Internet possible. And because they were built to be extremely general, TCP and its companion Internet Protocol (IP) allowed the Net later to encompass technologies and uses its designers never imagined. Rather than prescribe a particular purpose for the network, TCP/IP established rules that allowed for surprises.

Again, the settlement of the electronic frontier suggests something about the rules that foster dynamic systems. Write Hafner and Lyon: "Whatever structure [the Network Working Group members] chose, they knew they wanted it to be as open, adaptable, and accessible to inventiveness as possible. *The general view was that any protocol was a potential building block, and so the best approach was to define simple protocols, each limited in scope, with the expectation that any of them might someday be joined or modified in various unanticipated ways.* The protocol design philosophy adopted by the NWG broke ground for what came to be widely accepted as the 'layered' approach to protocols.... The job of the lower layer was simply to move generic unidentified bits, regardless of what the bits might define: a file, an interactive session between people at two terminals, a graphical image, or any other conceivable form of digital data. Analogously, some water out of the tap is used for making coffee, some for wash-

ing dishes, and some for bathing, but the pipe and faucet don't care; they convey the water regardless." (Emphasis added.)

Bits, water, shipping containers—these are all generic. Similarly, the 19th-century Midwestern grain trade took off once the Chicago Board of Trade figured out how to turn individual sacks of grain into a generic commodity that could be stored and traded interchangeably, based on very broad grades.

These examples suggest the second characteristic of dynamist rules: *The underlying rules apply to simple, generic units and allow them to combine in many different ways.* In this sense, dynamist rules are "atomistic." They do not specify which molecules must form, or which larger structures those molecules must, in turn, make up. But atoms rarely float free. And we have only to consis in the original.) A system of status determines connections and obligations by birth. Contract treats individuals as free and equal, creating their own bonds. Traditional contract law is as generic and flexible as Internet packet protocols.

Writes Richard Epstein: "The logic of mutual gain from voluntary exchange is perfectly general....[It] is not role specific. It does not speak about one set of rules for employers and another for employees, or one set for landlords and another for tenants. It does not create one set of rules for people who are rich and powerful and another set for those who are frail or meek. Instead, the law speaks about two hardy standbys in all contractual arrangements: A and B. These people are colorless, odorless, and timeless, of no known nationality, age, race, or sex."

People do not crave "settled identity" but instead tend to seek novelty: We marry outside our ethnic groups; adopt foreign foods and fashions; invent new words and art forms; develop new religious practices and beliefs. We leave our birthplaces to seek better lives elsewhere.

template the variety of the world's DNA to glimpse the possibilities that arise when simple units combine in complex ways.

From atoms to the alphabet, from music to math, the world's plenitude depends on very primitive units. Their meaning and purpose arise from the bonds they create: the way they fit together and the new building blocks these combinations then become. From an infinite series of bonds upon bonds, inspired by our imaginations and diverse tastes, we enrich the world.

Such bottom-up building is adaptable: The many subunits permit many fine adjustments, encouraging gradual adaptation instead of radical, all-or-nothing change. They also accommodate varied needs and tastes. Urban scholar Anne Vernez Moudon notes how small, regular lots, competing construction styles, and strict but general legal rules led turn-of-the-century San Franciscans to build the diverse and adaptable Victorian houses that mark that city to this day.

Rather than try to design the city as a whole, San Francisco's rule makers created a generic block system. Within the blocks, individual homeowners and builders had wide latitude to develop their own property to suit their needs and wants: They built detached, semi-detached, and row houses; they experimented with a variety of setbacks, bases, and facades; they included commercial buildings amid residences and stores on the first floors of homes. Patterns, such as putting commercial buildings on corners, emerged over time. As a whole, Moudon writes, "the architecture of the block was a potpourri of interpretations of loose rules of development, the result of uncoordinated decisions by pioneers." Over the ensuing century, this potpourri proved remarkably resilient, able to adapt to changing demographics and lifestyles, new technologies, and city growth.

Another way of expressing this second dynamist principle is the 19th-century legal historian Henry Sumner Maine's famous statement that "the movement of the progressive societies has hitherto been a movement *from Status to Contract.*" (Emphasis in the original.) A system of status determines connections and obligations by birth. Contract treats individuals as free and equal, creating their own bonds. Traditional contract law is as generic and flexible as Internet packet protocols.

"Contract" does not inspire romance. Its very idealism makes it sound cold and calculating. We naturally do not see ourselves as generic, so talk of people as "colorless, odorless, and timeless" hardly appeals to our egos. Only by treating individuals as equal, generic units, however, can overarching rules allow us to take advantage of our own knowledge, to express our individuality and follow our own ideas; the alternative is to force everyone to conform to a few rigid, pre-established categories.

Not surprisingly, then, one of the most effective ways to impose stasis and attack dynamism is to suggest the superiority of status over contract. Reactionaries invoke the warm sentiment of fixed status roles that are, by definition, respecters of persons. Wrapped in enough evocative language, they can make the traditional constraints of class, race, sex, and geography sound positively humane. In a passage typical of this genre, the philosopher John Gray declares that humans' "deepest need is a home, a network of common practices and inherited traditions that confers on them *the blessing of a settled identity.*...Human beings are above all fragile creatures, for whom the meaning of life is a local matter that is easily dissipated: their freedom is worthwhile and meaningful to them only against a background of common cultural forms. Such forms cannot be created anew for each generation." (Emphasis added.)

Through rhetorical sleight of hand, Gray conflates the desire for lasting commitments with an appeal for predetermined, inherited status roles. "Revealed preference," as the economists say, suggests that people do not crave "settled identity" but instead tend to seek novelty: We marry outside our ethnic groups; adopt foreign foods and fashions; invent new words, music, and visual art forms; develop new religious practices and beliefs. We leave our birthplaces to seek better lives elsewhere. We are forever fixing up our homes, changing our hairstyles, making up new stories. Such innovations are almost never "created anew for each generation." They are, rather, evolutionary

variations on old themes. We do not simply jettison the inherited or the familiar—but we do seek to improve on it. Honoring that pursuit, a dynamist world is, like the Internet, "open, adaptable, and accessible." By treating individuals as Epstein's "colorless, odorless, and timeless" A and B, dynamist rules allow us to forge new bonds—to join our ideas, our property, ourselves in "various unanticipated ways."

The technocratic alternative is to specify the exact shape of things, to reify detailed categories. Here the goal is to make a naturally fluid world static, to make labels permanent: Offices do not belong in homes. A full-time job takes five eight-hour days; four 10-hour days are not equivalent. Broadcast spectrum assigned to AM radio cannot be used for cellular phones. Whether such rules seem "conservative" or "progressive" depends on context, but they are consistently designed to impose stasis, to limit the bonds of the imagination. They assume categories cannot, will not, or should not change.

Nor are all static categories so technical, so seemingly dry and mercenary. In the late 19th century, railroads blasted through the granite of social status as surely as their builders dynamited mountains: On a train, paying passengers became contract's generic As and Bs—as odorless, timeless, and colorless as water in a pipe or bits on the Internet. All ticket holders were effectively the same, their contracts for carriage equally valid. So when black passengers bought tickets for unsegregated first-class cars, they expected their contracts to be honored, and they made them stick in court. But color was not an attribute dissolved without resistance.

The railroads, writes the historian Edward Ayers, "neither wanted to police Southern race relations and then be sued for it nor to run extra cars. It was clear that white Southerners could not count on the railroads to take matters in hand" by blocking or expelling black passengers from their first-class cars. "Some whites came to blame the railroads for the problem," says Ayers, "for it seemed to them that the corporations as usual were putting profits ahead of the welfare of the region." The critics were mostly right: The railroads were not civil rights pioneers but contract-bound businesses. Outraged Southern legislatures, who already resented the railroads' economic power, passed laws requiring segregated accommodations. (It was one of these laws, passed by Louisiana in 1892, that the U.S. Supreme Court upheld in the famous "separate but equal" case, *Plessy v. Ferguson.*) Combining the technocratic lust to regulate business with the reactionary zeal to preserve social stability, Jim Crow laws imposed static definitions on a dynamic commercial culture inclined to treat customers as "colorless, odorless, and timeless."

Notions of the public welfare have changed, of course, but the idea that race is static has not. State social service agencies have long engaged in "race matching" of children with adoptive parents, refusing in many cases to place even biracial children with white parents. The results have often been tragic: African-American children tend to stay in the twilight zone of foster care twice as long as their white counterparts. Some never find a permanent home. Nonblack foster parents often cannot adopt children they have raised as their own; indeed, asking to adopt can lead authorities to snatch the child from his home and place him elsewhere.

Race matching, argues the legal scholar Randall Kennedy, hurts children in deep and abiding ways, condemning them "to the anxiety of having no family that is permanently and inti-

TRAIN STOP: When railroads sold black passengers tickets to unsegregated first-class cars, outraged Southern legislatures passed laws that required segregated accommodations; an 1892 Louisiana law led to *Plessy v. Ferguson*'s "separate but equal" ruling. Jim Crow laws imposed static definitions on a dynamic commercial culture inclined to treat customers equally.

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mately one's own." In addition, "it strengthens the baleful notion that race is destiny. It buttresses the notion that people of different racial backgrounds really are different in some moral, unbridgeable, permanent sense. It affirms the notion that race should be a cage to which people are assigned at birth and from which people should not be allowed to wander."

This combination of insecurity and cages—and the resulting inability to shape one's own life by forming chosen bonds—is characteristic of the static world of status. The colorless, odorless, timeless A and B of contract, by contrast, permit an infinite series of combinations, encompassing the diversity of human beings and making a dynamic world resilient. Generic categories and general rules may sound cold, but they allow us to find our own sources of warmth.

Making Commitments

Contract is not, however, simply about categories. It is also about commitment. Contracts allow us to incur reciprocal responsibilities, to make promises others can rely upon, and to establish reasonable expectations for future actions. Those obligations may be as limited as the agreement to deliver a particular good at a certain price or as open-ended as the devotion of parents to an adoptive child—but they are all binding. To speak in chemical terms, the bonds of life create compounds, not mixtures. Compounds can, of course, be broken up, but that transformation does not take place easily, and it exacts a cost.

A dynamic society, then, depends not only on preserving fluidity but on permitting permanence. To learn, we must experiment. But to experiment, we must commit ourselves. And we must find ways to cooperate with others, to extend trust. Here, then, is the third characteristic of dynamist rules, a complement to the second: *The rules permit credible, understandable, enduring, and enforceable commitments.* That means not only that the rules are clear and predictable, but that people can be held to their promises (or penalized for breaking them). This security is essential not only to individual happiness but to growth, learning, and progress.

The great weakness of Habitat, says Chip Morningstar, was that its residents could not themselves create new places or objects within its virtual world. Nor could they build "their own little pockets of the universe," with their own rules. Allowing participants to add new objects or places meant letting them create software code that would then enter other participants' computers. That, says Morningstar, would require "inviting people inside trust boundaries that you just generally couldn't trust strangers in."

Today, Morningstar and some of his former Habitat colleagues are involved with a new venture, called Electric Communities, that is designing software to get around this problem. The goal is to allow "cooperation without vulnerability," to build in security and flexibility so that online worlds can evolve through the experiments and invention of their participants. The model is contract—a security system based on transferable "capabilities" rather than the static identity of passwords and "authorized user" lists.

Virtual frontiers are not the only settlements that require rules allowing "cooperation without vulnerability." We can see similar patterns in the burgeoning cities of the Third World. In his influential 1989 book *The Other Path*, the economist Hernando de Soto and a team of researchers identified barriers to legal entrepreneurship or home ownership in Peru's cities: To comply with all the laws to start a small garment factory, they found, required 289 days, 11 different permits, and $1,231 ("thirty-two times the monthly minimum living wage"); opening a small store legally would consume 43 days and nearly $600. (These figures, which are strictly for legal compliance, don't include such basic operating costs as sewing machines or store inventory.)

Concludes De Soto, "What we have here is bad law." Peru's highly bureaucratic mercantilist regime represents a perfect melding of reactionary goals and technocratic means; it maintains a traditional social hierarchy through complex regulations administered by experts. The country's "bad law" cannot accommodate the creativity of its ambitious former peasants, and so they defy it. In the face of the law's prohibitive costs in time and money, poor Peruvians have created an economy that operates illegally, yet provides services usually considered law-abiding. This "informal sector" has developed almost half the housing in Lima, built or acquired street markets worth $41 million, provided almost all urban mass transport, and accounted for about half of Peru's employment and nearly 40 percent of its gross domestic product.

Peru's highly bureaucratic mercantilist regime represents a perfect melding of reactionary goals and technocratic means; it maintains a traditional social hierarchy through complex regulations administered by experts. It cannot accommodate the creativity of its former peasants.

The law still matters, however, because bad law is only half the story. Informals also suffer, writes De Soto, "from the absence of a legal system that guarantees and promotes their economic efficiency—in other words, of good law." For that, Peruvian society pays a high price. Owners of land without a secure title cannot mortgage it to finance a business. They cannot confidently rent out all or part of a house, for fear that the tenant will claim to be the owner. They cannot be sure that any investment to improve their home will be theirs to keep or transfer. As a result, property without titles is more likely to remain

in shantytown conditions than property with titles.

Or suppose, suggests De Soto, that he and a friend decide to start a button factory. He has a button-making machine and excellent skills, his friend the necessary contacts to make the sales. They agree to split the proceeds 60–40, with De Soto, as owner of the machine, getting the larger share. But they have no way of enforcing the deal over the long term. "As a result," says De Soto, "my friend will choose instead to associate with a relative—someone in his extended family. And that person won't produce buttons as good as mine....The two talents that were required to make a successful industry in Lima will not be able to merge."

Relying on family ties is only a compromise solution, providing trust but limiting possible alliances. When people cannot make binding, enforceable commitments, dynamic progress is severely hampered. While it's wrong to presume that people can't make their own arrangements, it's equally wrong to imagine that in all cases the deals will be self-enforcing.

Douglass North, an economic historian who won the Nobel prize for his work on the relationship between institutions and economic growth, notes that "the inability of societies to develop effective, low-cost enforcement of contracts is the most important source of both historical stagnation and underdevelopment in the Third World." The challenges of Third World and post-communist development have demonstrated the power of North's once-controversial insight. Corruption and insecure contracts stifle economic development.

At best, entrepreneurial individuals find ways to shop for more-reliable legal regimes: In Russia, contracts are sometimes written to be paid not in currency but in natural gas, a generic product, for delivery in Germany and, hence, subject to the German rule of law. In other cases, contracts are backed with bank deposits in London or Bermuda and thus enforceable under British law. But such international arrangements are hardly "low cost." Too often the only alternative is real or implied physical intimidation.

Well-functioning legal systems are particularly important when strangers interact, but even then they mainly exist never to be used. Rather, they establish "the shadow of the law" under which bargains can be made. The goal is not to inspire legal disputes but to settle or avoid them. The clearer the rules, the fewer the conflicts. Recognized procedures for registering property, for instance, may be all that is needed to make title transfers secure. Rules that eliminate ambiguity make it more likely that people will keep their promises, for the simple reason that they will understand what in fact they have promised. And they will know that those promises can be observed by third parties.

Rules that support commitments (and, if applicable, the courts to interpret and enforce them) sound unobjectionable, even to the enemies of dynamism, who crave stability or control. But this side of contract, too, wrecks static visions. "Cooperation without vulnerability" does not make society stable as a whole; it instead provides room for experimentation and new, unfamiliar bonds. It gives no one central control but, rather, permits many different arrangements, Morningstar's self-governing "little pockets of the universe."

Confronted with commitments that disrupt their visions, people who want society to conform to a static ideal have several options. Most simply, they can refuse to recognize those agreements: remove children from their would-be parents; allow untitled property to be seized by nonowners; let railroads throw paying passengers off the train based on race. This is not simply a matter of court enforcement. For the bonds of contract to work, third parties must also honor them. If I sell you my house, the bank, the property tax collectors, and the neighbors all recognize the transfer. The hedge is now yours to trim, the plumbing yours to fix; if the gardeners or plumbers send me bills, I won't pay them. And if my friends or relatives enter your new home using keys they got from me, they and I are both in trouble —because everyone has agreed that the house is now yours. Our deal is enmeshed in other bonds.

But official recognition also matters. Family law, because it is still largely tied to status, is rife with examples of commitments unrecognized by the authorities: Legal disputes over surrogate motherhood hinge on whether courts will recognize the contracting couple's right to the child. Single-sex couples find their commitments to de facto spouses disregarded in matters ranging from hospital visitation to inheritance taxes. No-fault divorce laws nullify marriage contracts that require mutual consent for dissolution. Ignoring such commitments can, all by itself, erode them.

Alternatively, the bonds of contract can be actively broken and replaced by an order more to the liking of distant authorities. Universities, for example, give professors the security of tenure but have long included mandatory retirement in the bargain. Now, however, they can no longer enforce the retirement contract: Federal law prohibits such "age discrimination," making tenured professors employees for life and forcing schools to offer expensive buyouts if they want to make room for younger faculty. The law has disrupted the progression from one generation of professors to the next and stuck universities with unproductive scholars who decline buyout offers.

Finally, bonds can be broken indirectly, by attacking the norms that enforce them. In many communities, geographic and otherwise, reputation is a far more reliable enforcement mechanism than the vagaries and expense of the courts. Protected in the United States by the First Amendment and in other free countries by traditions of open discourse, journalism and science operate almost entirely outside the courts. They are self-governing professions that trade in truth and rely heavily on trust. Journalists honor promises to sources and scientists uphold standards of peer review not, with rare exceptions, because they can be dragged into court but because their professional reputations are at stake.

For reputation to work, however, the rules must allow ostracism. That means permitting criticism—and not only in extreme, well-publicized cases. But employment law has seriously eroded the ability of former bosses to give truthful references, especially about employees who have been fired: Saying anything bad can result in a defamation suit, while a positive reference can be grounds for a wrongful dismissal case. There is something disconcerting about calling a newspaper editor for a job reference only to be told that company policy prohibits any comment other than confirmation of employment. It's a common prac-

tice in many businesses, but especially troubling in a profession that depends on the free exchange of information and that relies almost entirely on reputation to check bad actors.

Criticism and Competition

Learning by trial and error means having the chance to try things. It also means finding out when they don't work, or when something else works better. That, in turn, implies that other people will get the chance to prove your ideas wrong, or inferior, or limited to a smaller audience than you imagined. Depending on whether you're trying a new physics theory, a supposedly improved laundry detergent, or a new style of music, "error" may be either absolute or relative to other people's alternatives and current tastes. Progress through trial and error depends not only upon making trials but on recognizing errors. Criticism is at the very heart of the dynamic process of learning.

But there is always pressure to block criticism: to shut off alternatives, to shelter the familiar, to stifle the imagination. Criticism is, after all, no fun for its targets. No one wants to be a failure, even a relative one. So reactionaries who fear disruption, technocrats who want to pick winners, and self-interested parties who want to shut out rivals can all be counted on to try to limit criticism and competition. The ability to resist this collusion against new ideas is perhaps the single most distinguishing feature of dynamic systems.

This, then, suggests the fourth characteristic of dynamist rules: *The rules protect criticism, competition, and feedback.* They allow both the freedom to challenge established ideas and the freedom to offer alternatives—*criticism by expression* and *criticism by example.* And they make sure that no one has the privilege of conducting experiments insulated from the effects of failure. Dynamic, evolving systems have no guaranteed or permanent winners.

Protecting criticism means policing attempts to silence critics by force. Left unchecked, terror can be an effective way of maintaining stasis. It worked well in the segregated South, where authorities did not control violent intimidation against blacks or whites who broke racial norms. By contrast, one reason the historical Luddites failed was that British authorities enforced the law against their violent acts. And the novelist Salman Rushdie remains alive and writing in part because the British government has protected him from religious vigilantes.

The greatest power to block criticism is, however, the legal force held by government itself. Unlike the Unabomber, legal authorities need not send bombs to random targets whose ideas they dislike; they can simply ban the expression of those ideas and enforce the ban with prison terms, a far more efficient approach. That is why government power is often the first tool stasists try to grab when they want to stop challengers—whether those challengers are disrupting traditional hairstyling, promoting dissident political views, or desegregating trains—and it is why dynamists are wary of laws that hinder competition.

The economic historian Nathan Rosenberg imagines business startups and investment decisions as "economic experiments," explorations aimed at discovering better technologies and organizational forms. He emphasizes both "the freedom to conduct experiments" and the need to test them. And he stresses the danger of letting any single authority rig the outcomes: "Historically, one of the most distinctive features of capitalist economies has been the practice of decentralizing authority over investments to substantial numbers of individuals who stand to make large personal gains if their decisions are right, who stand to lose heavily if their decisions are wrong, and *who lack the economic or political power to prevent at least some others from proving them wrong.* Indeed, this particular cluster of features constitutes an excellent candidate for *the* definition of capitalism." (Emphasis in the original.)

If your goal is to impose a single, static vision, this "cluster of features" contains exactly the rules you must overturn. It permits turbulence and annoying questions. Stasis cannot survive a constant stream of alternatives, whether economic or intellectual. It can tolerate neither criticism nor uncertain outcomes.

The economic and intellectual spheres are not as easily separated as our political discussion often suggests. Rules that allow criticism by example often feed criticism by expression, and vice versa. In many cases, ideas embedded in products and processes are intimately connected with ideas expressed in words. Braiding salons make not only a profit but an argument about African beauty. Rushdie's novels are not intangible abstractions but physical books, sold in public stores.

Even in the nitty-gritty of manufacturing, example and expression are bound together. When Toyota learned in 1970 that Volkswagen could change dies on a 1,000-ton press in two hours —half the time it took the Japanese carmaker—the company set out to beat the competition. Achieving that goal after six months of hard work, Toyota pressed on, ultimately reaching a once-inconceivable three-minute changeover time. This remarkable "Single Minute Exchange of Dies," or SMED, technique required

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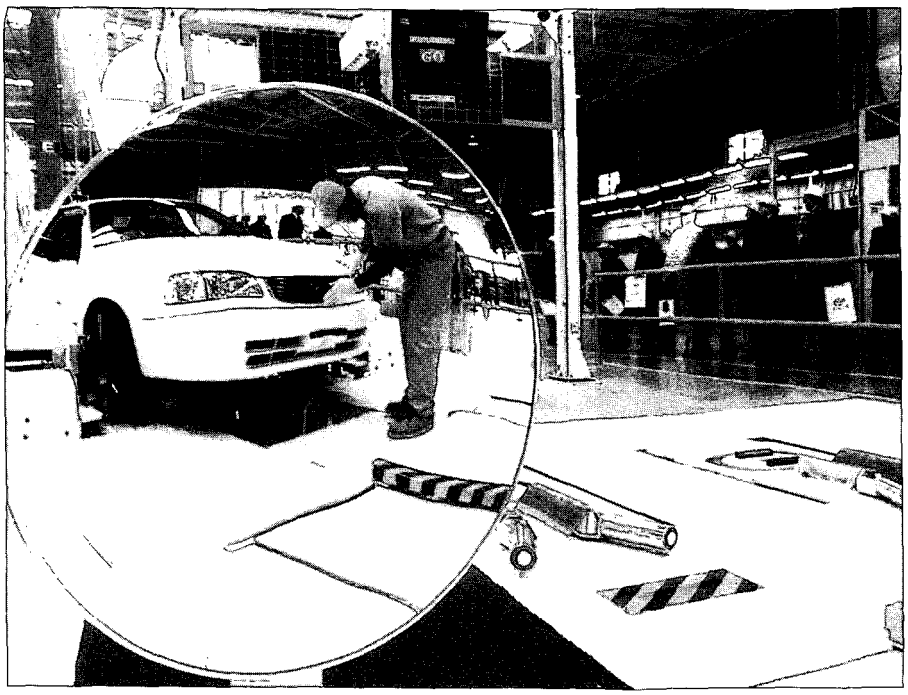

THE DIES AREN'T CAST: In 1970, when Toyota learned that Volkswagen could change manufacturing dies in just two hours, it set out to beat the competition and eventually developed a once-inconceivable three-minute changeover time. Rules of free trade, often derided for their disruptive effects, spread these and other ideas worldwide, leading to all sorts of new "lean manufacturing" techniques.

ARCHIVE PHOTOS

both new thinking about how production is organized and enormous attention to detail. The rules of free trade, derided by reactionaries for their disruptive effects, spread these new ideas worldwide: Fierce competition from Toyota and other Japanese companies spurred U.S. automakers, who would otherwise have considered such fast changeovers impossible, to reinvent their own production. And along with that criticism by example came criticism by expression: books, articles, seminars, and consulting by the creators and students of SMED and other "lean manufacturing" techniques.

Criticism doesn't apply just to old ideas, however. Many "improvements" fail to excite anyone but their inventors: ScotTowels Junior didn't fit on conventional paper-towel racks; Maxwell House ready-to-drink coffee couldn't be microwaved in its original container; Kleenex Avert Virucidal Tissues scared away customers with that deadly name.

As Jonathan Rauch notes in *Kindly Inquisitors*, "We can all have three new ideas every day before breakfast; the trouble is, they will almost always be bad ideas. The hard part is figuring out who has a *good* idea." Rauch's concern is protecting "liberal science," the process of continually checking intellectual hypotheses through decentralized, rigorous, no-holds-barred discussion. He worries that rules against giving offense threaten that dynamic process. To work, Rauch argues, liberal science must allow criticism, without limiting who can participate or what they can say, and it must give no one the final authority.

This system allows incremental improvements over time, as people refine their views in response to criticism. And completely different hypotheses can compete, mustering data in their favor and attacking counterhypotheses: Geologists, chemists, astronomers, and paleontologists duke it out over whether the impact of an extraterrestrial body led to the extinction of the dinosaurs. Milton Friedman and Anna Schwartz write *The Monetary History of the United States* to show that "money matters," contrary to the received Keynesian wisdom. Within a decade, the theory of continental drift goes from geologic crankdom to how the world works.

Hypotheses that challenge established ideas may have a tough time—for good reason in most cases—but under dynamist rules they can't be squashed altogether, only marginalized. Anyone can start a journal; form a scholarly, political, or religious association; set up a Web page or discussion group. Anyone can try to persuade the world (or the relevant portion of it) of their ideas. The freedom to persuade is central to a dynamic, learning system, whether the lessons are intellectual, cultural, religious, or economic. And that persuasion takes many forms, of both expression and example. "At the root of technological progress is a rhetorical environment that makes it possible for inventors to be heard," suggests the economic historian and rhetorician D.N. McCloskey. "Free speech leads to riches." Both showing and telling are important.

Rules Within Rules

We swim in a sea of rules. Few are as fundamental as the four principles elaborated above. Rather, they are particular: company policies, traffic laws, religious strictures, etiquette conventions, professional ethics, grammar and syntax, game rules, software programs, university honor codes. Between the common law of contracts and "Never eat old mayonnaise" lie layer upon layer of increasingly specific rules.

The final characteristic of dynamist rules, then, is a rule about

rule making: *Dynamist rules establish a framework within which people can create nested, competing frameworks of more-specific rules.* The overall framework allows Morningstar's "little pockets of the universe" to emerge, establishing their own rules. Competition—the option to leave one pocket of the universe for an alternative—permits such specific rule regimes to flourish without making the overall system rigid or inflexible. We can choose the bonds with which to shape, and reshape, our lives.

In *How Buildings Learn*, author Stewart Brand examines how buildings are adapted to new uses over time—and what makes for resilient architecture that can "learn." His research provides a useful metaphor for dynamic systems in general. A building, he notes, contains six nested systems: site, structure (the foundation and load-bearing elements), skin (the exterior), services (wiring, plumbing, heating, etc.), space plan (the interior layout), and stuff. The further out the system, the more permanent. Moving around furniture (stuff) is easy, altering a foundation (structure) extremely difficult.

In a building, writes Brand "the lethargic slow parts are in charge, not the dazzling rapid ones. Site dominates Structure, which dominates the Skin, which dominates the Services, which dominate the Space plan, which dominates the Stuff. How a room is heated depends on how it relates to the heating and cooling Services, which depend on the energy efficiency of the Skin, which depends on the constraints of the Structure....The quick processes provide originality and challenge, the slow provide continuity and constraint." A well-designed, adaptable building, he argues, respects the different speeds and different functions of these nested layers. It keeps them separate, allowing "slippage" so that the quick inner layers can change without disrupting the more permanent systems. (You don't have to tear up the foundation to fix the plumbing.)

So it is with rules in a dynamic, learning system. The basic dynamist rules, like a building site or foundation, change slowly, if at all. That is why they must be extremely general. But on top of them, we build increasingly fluid, nested sets of more-specific rules.

The rules of free inquiry, property, and contract that allow universities to form may not change much over time, for example, but the institution-specific codes governing curfews, library privileges, computer use, curriculum requirements, or admissions procedures can evolve rapidly, assuming each institution is free to govern itself. Between the general rules and the institution-specific codes lie other rules: the professional standards that govern scholars, the classification systems that catalog books, the Internet protocols that link computer systems. Nor must every school adopt the same, or even similar, rules. A system of free competition and criticism allows room for fundamentalist Bob Jones University and for freewheeling Berkeley, for requiring senior theses at Princeton and co-op work internships at Northeastern. By choosing a university and leaving if they don't like it, students and faculty decide which rules they wish to be governed by. They don't have to agree on which rules are best for everyone. Nested rules accommodate diversity.

The more that rules must compete for adherents, the more legitimacy they enjoy and the more local knowledge they can incorporate. "We reject kings, presidents, and voting. We believe in rough consensus and running code," declares the Internet Engineering Task Force Credo, and Internet rules have indeed evolved through trial-and-error competition. Net pioneers are intensely loyal to that process. Against demands for censorship and regulation, they reflexively propose flexible, nested alternatives: filtering software for many different tastes, voluntary Web site "trustmarks" indicating various audited privacy standards, access-provider terms of service enforced by banishing rule breakers. These ideas assume that diversity is valuable and that there is not one best way.

Competition makes the distinction between dynamist principles and technocratic rule making all the more clear: Dynamists seek a world not without rules but a world in which rules govern the appropriate level of life. Dynamist rules permit complexity and plenitude, even of rules themselves.

"The value of labels," writes technology intellectual Esther Dyson, "is that people can pick the rules that suit them, rather than be forced to operate in a one-size-fits-all environment where everyone has to follow the same rules....The basic rule is that providers must disclose—label—themselves clearly and honestly. And they must do what they promise to do." Contract, commitment, and competition permit diverse, voluntarily accepted nested rule sets.

Competition makes the distinction between dynamist principles and technocratic rule making all the more clear: Dynamists seek not a world without rules but a world in which rules govern the appropriate level of life. Rachel's rules exist in a dynamist world, infused with the knowledge accumulated through generations of trial-and-error learning. But such rules are the "stuff" of life, the particular maxims through which individuals govern themselves. They are not the "site" or the "structure" to which all of society must conform. Dynamist rules permit complexity and plenitude, even of rules themselves. ◆

Editor Virginia Postrel (vpostrel@reason.com) is the author of The Future and Its Enemies: The Growing Conflict Over Creativity, Enterprise, and Progress *(The Free Press), from which this article is adapted. The book's Web site is at www.futureand.com.* *Copyright © 1998 by Virginia Postrel. Reprinted by permission of The Free Press, an imprint of Simon & Schuster Inc.*

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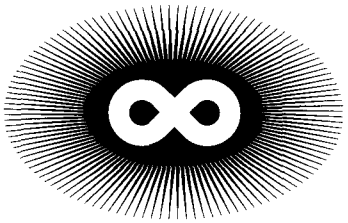

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The Good Soldier

Presidential hopeful Sen. John McCain certainly is a man of honor. But is he a man of principle?

By Michael W. Lynch

"Shocking, shocking, it's like the crazy aunt in the basement," says Sen. John McCain (R-Ariz.), when asked in his Senate office about a quote he gave to *The Washington Post* claiming he had a "streak of libertarianism." "I think I do, I think the people of Arizona do, and I think my predecessor Barry Goldwater did."

If you define a libertarian as a rebel, John McCain is Washington's perfect example. He is well known for doing what he wants and saying what he thinks—a "maverick," if his press is to be believed. In his younger days, this meant pushing any institutional rules by which he found himself bound: at Episcopal High School in Alexandria, Virginia, at the Naval Academy at Annapolis, and later as a Navy aviator. He enjoyed a good party, fast cars, and fast women. He liked to tell a "good" joke, and still does. (In June, he broke the "Chelsea rule" at a Republican Party fund-raiser. The reason Chelsea Clinton is ugly, according to McCain, is because Janet Reno is her father.) He also savored a good smoke—a real Marlboro man.

But this wild streak isn't what the senator has in mind when he calls himself something of a libertarian. He's out to convince REASON that he shares an affinity for free minds and free markets: "I'm fundamentally a deregulator, a free-trader, a free-enterpriser," says McCain, as he begins to rattle off a list of libertarian bona fides. "Most of my efforts have been to reduce the size of government. I spend weeks every year trying to turn back pork-barrel projects. I fought 10 years for the line-item veto. I believe in smaller government, the best government is local government....Any objective observer who looks at my 16-year record would view it as fundamentally and to some degree libertarian, if you describe 'libertarian' as minimal role of government in society."

McCain boasts a lifetime American Conservative Union voting record of 86 percent, although it tellingly dropped to 68 percent in 1998. In 1997, the U.S. Chamber of Commerce and the National Federation of Independent Business scored him at 100 percent. He earned a 5 percent approval rating from the left-wing Americans for Democratic Action, and the American Federation of State, County, and Municipal Employees union gives him a lifetime rating of 16 percent. The American Civil Liberties Union scored his 1997–98 votes at 14 percent, while the Christian Coalition gave him 73 percent—which is where we start to see his libertarianism crack.

"He votes very conservative," says longtime friend Orson Swindle, currently a lonely voice for less regulation on the Federal Trade Commission. Yet McCain's recent fame—the reason this magazine, and much of the national press, is interested in him—comes from two initiatives fundamentally at odds with the principles of libertarianism or, for that matter, a conservatism that is skeptical of federal power. In the past year, McCain has devoted his considerable energy and media presence to pushing for dramatic restrictions on campaign contributions and spending and for draconian new regulations and taxes on tobacco.

"The tobacco deal, and perhaps for some, campaign finance, is not in keeping with my [conservative and libertarian voting record]," McCain admits, in a bit of an understatement. The question is what this high-profile apostasy says about a man who clearly wants to be president. Is he, as *The Weekly Standard*'s Andrew Ferguson writes, "a thoroughly conventional politician—vague, hesitant, risk adverse" or, as *Slate*'s David Plotz calls him, "opportunistic," a "calculating populist who has built his career on sexy, attention-getting issues"?

McCain doesn't see himself as either. Asked what he wants people to think when they hear his name, he says

HENRY PAYNE

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"principled" without hesitation. Press accounts are salted with quotes from McCain and his admirers about how he "does what's right."

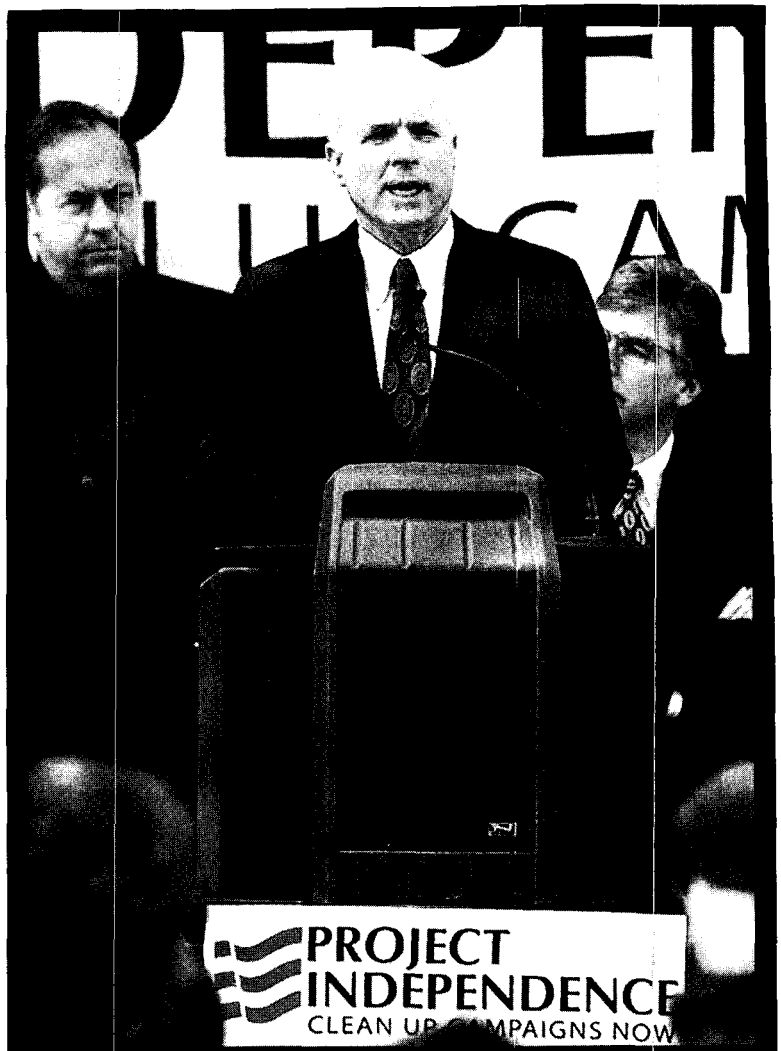
"I think the principles [McCain refers to] would be honesty," says Sydney Hoff Hay, an Arizona political consultant who has worked with and observed McCain since the 1980s. "He's someone that says what he thinks and tells the truth." Swindle, who's been a McCain buddy since they met as Vietnam POWs in 1970, characterizes McCain as "a very principled person."

But how does a man of proclaimed "principle"—a proclamation bolstered by those who know him best and by a 16-year voting record—go so wrong on such consequential issues? Skeptics heap scorn on the notion that McCain has any principles. "His principle is that he should codify any prejudice he happens to have," scoffs Ed Crane, president of the Cato Institute.

McCain's friends, foes, and biography suggest a more complicated, but no less politically worrisome, explanation. For John McCain, principle is fundamentally about honor—personal honor: about keeping his word, about doing what is right and doing it well. "Principle" combines honesty, stubbornness, and loyalty. This notion of principle is very different from adhering to a consistent political philosophy. It explains McCain's popular appeal, especially in contrast to the exceptionally dishonorable Clinton administration, but also accounts for the distrust, even contempt, he inspires among the ideologically committed.

"John does what he believes but doesn't have that kind of well-thought-out philosophy," says David Keene, chairman of the American Conservative Union, who generally speaks highly of McCain but opposes his recent attacks on the tobacco industry and free speech. "He is a guy who does do what he thinks [is right]. The problem is what he thinks [is right] is neither consistent nor always that helpful to himself or his party."

McCain's view of principle grows out of an aristocratic code of virtues, which in turn informs the ethics of the military, the institution within which McCain was born, raised, and spent much of his life working. The heart of the aristocratic code of ethics, according to University of Tulsa historian Paul A. Rahe, is that one doesn't let people down. Obligations, in this view, are not owed to abstract systems of belief. They are specific, personal, owed to individuals or institutions: one's troops, the Senate, one's country. By this definition of principle, McCain's story shows him to be quite principled indeed.



TALK SHOULD BE CHEAP: Despite his "streak of libertarianism," John McCain is a fierce adovcate for campaign finance reforms that would seriously limit political speech.

AP / WIDE WORLD PHOTOS

John Sidney McCain III was born into a life of service, the grandson of a Navy admiral and the son of an admiral-to-be. "My father never asked me once, 'Do you want to go to the Naval Academy?'" recalls McCain. "It was always, 'He's going to the academy.'"

McCain went, but not graciously. "I chafed at discipline my whole life," he admits. At Episcopal High School in Alexandria, he fashioned himself a rebel. A cigarette dangles from McCain's mouth in a yearbook photo, and his senior-year classmates voted him runner-up in the category of "Thinks he is" the "Hardest." According to Robert Timberg's *The Nightingale's Song* (1995), which chronicles the lives of five Annapolis graduates who served in Vietnam, McCain was known as "Punk," "Nasty," and "McNasty."

At the Naval Academy, writes Timberg, McCain was the "unofficial trail boss for a lusty band of carousers and party-goers known as the Bad Bunch." McCain, who had an ability to successfully cram for tests, had little use for tedious academic study. Nor did he accept the strict rules that governed the academy. "At the end of his four years, he figured he had marched 'to Baltimore and back seven times' on disciplinary detail," wrote *New York Times* correspondent R.W. Apple in a 1967 front-page report on McCain's downing over Vietnam. "His hair was seldom

trimmed and he often wore a rumpled khaki shirt." In 1958, he graduated 894th in the academy's 900-man class. While still in the academy, he enjoyed a high-profile fling with one of Brazil's leading models.

Out of Annapolis, McCain became an aviator, a life for which the charismatic rebel seemed well suited. "I enjoyed shooting rockets and dropping bombs and shooting off guns," he told *Esquire*'s Charles P. Pierce for a May 1998 article. "You're a young, single guy, and you go out and you fly for a couple of weeks, then you come in for a week and carouse like hell. Nobody deserves to get paid for that."

But McCain's life wasn't all bombs, booze, and babes. There were flying duties, which seemed rather hazardous for the young aviator. At advanced flight school, McCain's engine died one afternoon and he found him-self at the bottom of Corpus Christi Bay. He flew into power lines over Spain and, returning to Mississippi from an Army–Navy game in Philadelphia, was forced to eject from his plane when its engine failed. He made the front page of *The New York Times* on July 31, 1967, when a renegade rocket ignited his Skyhawk's fuel tank while he was preparing to take off from the carrier *Forrestal*. The fire engulfed the *Forrestal*, killing 134 sailors—the worst disaster at sea since World War II. The accident was caused, military officials believe, by an electrical malfunction in a nearby plane, which launched a rocket on the ship's deck. McCain seemed to have bad luck around planes, but good luck escaping his bad luck. That was about to end.

The question for an aspiring president, or an influential senator, is whether personal honor and physical courage are an adequate substitute for *political* principle.

On October 26, 1967, McCain was shot down over North Vietnam. Fished out of Trucbach Lake by North Vietnamese soldiers, he was escorted to Hoa Lo prison in Hanoi, commonly referred to as the "Hanoi Hilton," the most famous institution in the North Vietnamese prison system, in which he would spend the next five and a half years. He refused early release, which would have violated the military's Code of Conduct for American Fighting Men. The code requires soldiers to accept release only on a first-in-first-out basis. With legs and arms broken beyond the ability of North Vietnamese doctors to repair, McCain could have justified an early exit based on medical necessity, and he considered it. But knowing this would have been a huge propaganda coup for the North Vietnamese—his father at the time was commander-in-chief of U.S. Naval Forces in Europe and in less than a year would be put in charge of all U.S. military forces in the Pacific—he decided to stay.

And like other American POWs housed at the Hanoi Hilton, he paid his rent with brutal beatings. Writes Timberg: "He was moved to another cell where his arms, battered, broken, and bruised in one way or another since the day he was shot down, were lashed behind his back, then cinched tightly together to intensify the pain. He was left on a stool. Throughout the night, guards came in, asked him if he was ready to confess, then smashed their fists into him when he told them no.

"The next several days fell into a harrowing routine. The ropes came off in the morning. Beatings were administered throughout the day, usually by one guard, sometimes two. On occasion two guards would hold him up while a third hammered him senseless. At night, the ropes were reapplied."

McCain may have been a lifelong petty-rebel playboy, but when his moment came—five and a half years of moments—he acquitted himself with honor. McCain was broken once and signed a confession, an act which plunged him into despair. But in this McCain was no different from other POWs.

His record naturally impresses people, and it distinguishes McCain from political figures with less dramatic pasts. "People can talk real tough. They can say the right things," says Marshall Wittmann, former legislative director of the Christian Coalition and a McCain enthusiast. "But when the test came in his life, he not only passed it, but he passed it with incredible valor that very few people can match." Says Swindle, "When it came time to measure up, he measured up."

The question for an aspiring president, or an influential senator, is whether personal honor and physical courage are an adequate substitute for *political* principle. The United States is not an aristocracy but a modern republic. Its political officials do not lead personally loyal troops into battle. They create the impersonal rules that, if lawmakers do their work well, allow a free society to flourish.

McCain, by contrast, seems primarily interested in making government conform to his ideals of personal virtue. The appearance of corruption offends his sense of honor, making him above all a proponent of "good government." He led the charge for the 1996 Senate gift ban, which restricted the freebies senators and their staff could accept from individuals and organizations. He employed a person, dubbed "the ferret," who combed through bills looking for pork-barrel projects. The ferret has moved on, but McCain staffers still analyze each appropriation bill for pork, posting the results on his Web page. "He's a pork buster," says Tom Schatz, president of Citizens Against Government Waste, which scores McCain's lifetime voting record at 87 percent. "He's even protested pork in his own state."

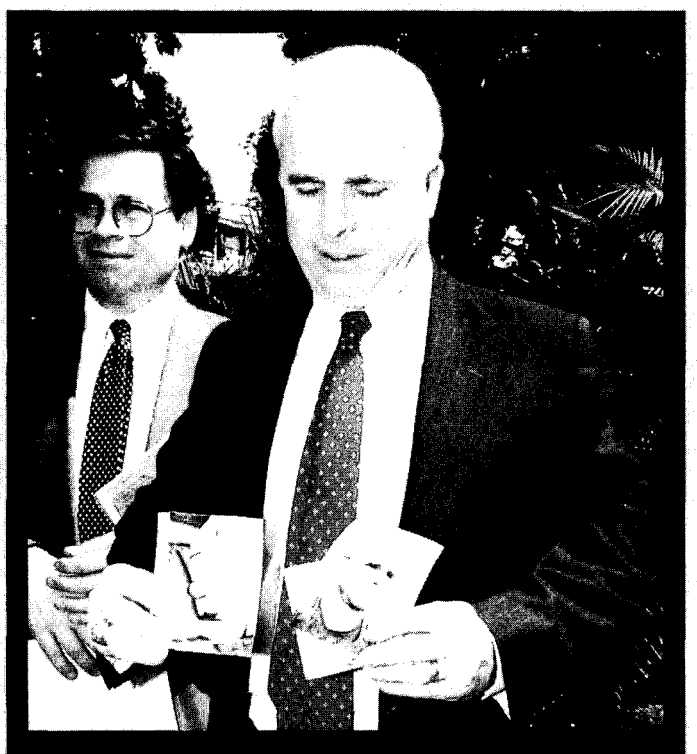
Most recently, McCain voted against the 1999 budget bill, de-

The Media's Favorite Marlboro Man

How to account for it? He's pro-life, boasts a conservative voting record, yet has Washington's sensibly liberal prestige press drooling all over him. He's become the television producers' go-to guy for comment on issues ranging from foreign policy to presidential erections. He's been profiled favorably by so many media outlets that, as *The Weekly Standard*'s Andrew Ferguson notes, "NBC news, the *Washington Post*, and other news outlets have assigned reporters to do favorable stories explaining why the stories about John McCain are so favorable."

Many people have theories about why this is so. Conservative activists grumble that McCain owes his press clippings to his willingness to trash Republican orthodoxy. *Phoenix New Times* writer Amy Silverman, a fierce McCain critic, offers a comprehensive explanation: "He's a war hero; he's a neopopulist; he reminds them of themselves; he's accessible; and, finally, they say, his image is genuine, not manufactured."

I agree with it all, and offer one addition. McCain's life story is fun to tell and makes an easy metaphor. It's pleasing to write such prose as, "Not since he was fished out of a North Vietnamese lake in 1967 has John McCain faced such a challenge..."



P.O.W. WOW: McCain's highly favorable relationship with the media stems more from his dramatic biography than his actual positions.

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OK, so I made that up. But check out these passages.

"Mayday! Mayday! Tiger Two to Naval Command. I'm taking flak from my left and heavy ack-ack from my right," liberal *Boston Globe* columnist and leading McCain sycophant David Nyhan begins a June 3, 1998, piece, later adding, "The last time John McCain was in a similar pickle, he was shot down over Vietnam and landed in pain, in prison and in the hands of torturers. Now, Big Tobacco is trying to do what the North Vietnamese prison guard couldn't do in six years of trying: Make him say 'Uncle.'"

The Economist's "Lexington" columnist blew McCain this kiss in June: "After all, there is no other Senator with quite the same experience of the trick of fate: shot down over Vietnam; horribly tortured during more than five years' captivity in the 'Hanoi Hilton', half of them in solitary confinement; financed in his early political career by a man who turned out to be a crook. No wonder the deep-brown eyes have a piercing quality to them; no wonder the energy level is almost frenetic, as though there is too much to do and not enough time to do it in."

"Already a war hero for defying North Vietnamese torturers," *Roll Call* executive editor Morton M. Kondracke wrote on April 13, 1998, "McCain now is cast as St. George doing battle with the cancer-dragon Big Tobacco."

But no one piles it as high as the high-dollar writers who cross the line that separates blowing kisses from kissing butt.

"McCain's ambition is outlandish: not to win a debate (there's no one to debate), or to cut a deal (there's no one to cut it with), but to create a climate of political opinion—a national mood—that will overwhelm the immediate interests of some of the shrewdest characters on the planet," Michael Lewis wrote in a May 1997 *New York Times Magazine* article. "The goal is not merely to take money out of politics but to change the nature of public life."

McCain may want to change the nature of public life. But *Esquire*'s Charles Pierce wants to change the nature of political profiles, filing this paragraph filled with words as melodic as they are meaningless:

"It's a perilous thing, this act of faith in a faithless time—perilous for McCain, who still has to put it all at risk in the daily business of being a politician, and perilous for the people who have to come to him, who must realize the constant risk that, sometimes, God turns out to be just a thunderstorm, and the gold just stones agleam in the sun."

—Michael W. Lynch

nouncing it on the Senate floor as a "betrayal of our responsibility to spend taxpayers' dollars wisely." Earlier in 1998, he voted against the monstrous highway bill, which was loaded up with more than 2,000 special projects—more than four for each congressional district. He labored for a decade on the line-item veto, a good-government tool that the Supreme Court just returned to the shed. He's quick to point out—right after saying, "I'm not a conventional politician" and just before adding, "not a popular position in Iowa"—that he opposes ethanol subsidies.

Like other good-government types, McCain hates special interests. He voted against the 1996 telecommunications act—the only Republican to do so—because special interests "driving that train" had made it too regulatory. Hating special interests, however, does not necessarily mean hating regulation.

Cut to Big Tobacco. It's in the tobacco legislation that McCain's sense of "principle" shines through. He was assigned the task, so he did his duty in crafting legislation that could make it to the Senate floor. The anti-tobacco bill was about good government: McCain appears genuine in his belief that tobacco use foists a $50-billion-a-year tab on taxpayers. It was about honesty: Says McCain, "They lied to Congress and the American people." It was about children: "Three thousand kids start smoking every day, 1,000 will die early," McCain would chant anytime a television camera was near. It was about what the experts say is best: "It wasn't my views I was articulating; they were the views of every expert in America," McCain told a National Health Council audience in July. Add McCain's work ethic to this mix—the ethic that put him in the Senate less than six years after he first moved to Arizona—and you get a committed anti-tobacco warrior.

McCain's focus on campaign finance reform is also easy to understand. Ask people what's the first thing that comes to mind when they hear McCain's name, and they are likely to say "maverick," "POW," "independent," or "war hero." They aren't likely to say what McCain fears the most: "Keating Five."

McCain was close to Charles H. Keating Jr., the savings and loan swindler who gave generously to politicians and then sought their help. From 1982 to 1988, McCain collected more than $100,000 of Keating's cash for his campaign funds and vacationed with Keating several times, flying on Keating's jet to the Bahamas. McCain's second wife and father-in-law invested $359,000 with Keating in a shopping center.

McCain attended the two infamous April 1987 meetings in the office of then-Sen. Dennis DeConcini (D-Ariz.) where Keating's business dealings were discussed with banking regulators. Although McCain didn't seek any favors for his former friend, he was still implicated in the scandal: all that money, the vacations, and the meetings. He was the only Republican involved, and there was no way the Democrat-controlled Senate would absolve him early, thereby losing the veneer of bipartisan scandal.

Although the Senate eventually cleared McCain, the appearance that he sold his high office called his honor into question, an indelible stain on an otherwise perfect record of public service. "Here is a man whose family —father, grandfather and himself— were real patriots, and he was accused of being a sleaze," former New Hampshire Sen. Warren Rudman told *National Journal* in 1997. "He told me that from his point of view it was worse than being in Vietnam and in prison."

For McCain, campaign finance reform is therefore imperative. By working to reform the supposedly "corrupt" system, he implicitly transfers blame for his Keating connection. If the First Amendment takes a beating, so be it. From a politically principled viewpoint, that sounds selfish, even dishonorable. But that isn't how McCain sees the matter: If the system could make even him look sleazy, he seems to reason, there is something wrong with the system.

Republicans have plenty of recent experience with honorable presidential candidates who operate on aristocratic virtues. Think Bob Dole and George Bush.

Republicans have plenty of recent experience with honorable presidential candidates who operate on aristocratic virtues. Think Bob Dole, the man McCain most admires as a senator, and George Bush, who never mastered that "vision thing."

"Bush and Dole were civil servants in the most distinguished sense of the word—admirable men. The same can be said of McCain," says Rahe, the University of Tulsa historian. But they "can't project a vision or provide leadership except in a crisis." Such men do not achieve high office to change the world but rather to fulfill a combination of ambition and duty. In McCain, America would get an auditor-in-chief. "We could do a lot worse," says Rahe. "But we could do a lot better."

Political scientist John J. Pitney Jr., a professor at Claremont McKenna College and a REASON contributing editor, agrees. "On the personal level he has the capacity to inspire trust, which we have seen [during Clinton's scandals] is important," says Pitney. "But there's more to leadership than that. Leaders have to have a clear sense of direction. And that's the question for John McCain: Does he have a clear sense of direction?"

He certainly doesn't articulate a vision, although he seems to know it's important to have one. "There's no country that has

been this powerful since the Roman Empire," McCain responds, when I asked him what he would like to accomplish as president. "If you accept that fact, then the leader of the world's most powerful nation can be an incredible force for good, both within the boundaries of the United States and without."

Outside the nation's borders, McCain would focus on "democracy, freedom, stability, economic growth, and peace." His biggest criticism of the Clinton administration, with which he's often cooperated, is "they have no conceptual framework of what they want the world to look like in the next century." True enough—except that McCain, too, lacks such a framework.

When the *Standard*'s Ferguson tried to nail him down on his vision, McCain replied: "The first thing I'd do is convene the best minds I know of in the field of foreign policy....I'd say, 'Look, let's figure out where we are, where we need to go, and what our conceptual framework is. Let's work out a cohesive foreign policy.' I'm sure that those people, with their collective brilliance and a lot of experience, could come up with a very cohesive foreign policy."

Relying on experts "goes well with a military background," says Rahe. "The Navy and Air Force see the world as engineers, a series of technical problems that need to be fixed." McCain, who repeatedly calls on the authority of experts to justify his positions on issues ranging from foreign policy to tobacco, fits this pattern well. So well, in fact, that Ferguson called him "a thinking man's Perot."

Although McCain's bravery and charisma might serve him well in a general election, GOP primary voters care about political consistency. It is not enough to be honest, stubborn, and loyal.

McCain's vision isn't much clearer on domestic policy. In many ways, he's a typical Republican. He knows what he's against—government waste, special interests, and unfiltered, er, any cigarettes—but just can't come up with a compelling list of what he's for. Sure, he supports the obvious in the information age of the kid: technology and children. "[We need to] help every American to be part of this incredible economic revolution taking place in the form of information and technology, which for the first time could provide every child in America with an equal opportunity," he says.

Again employing Perot-style technocratic language, McCain talks of the need for government to support "programs that have proven successful," as well as "encouraging private industry and private enterprise." When asked for examples of successful government programs, McCain comes up with Head Start and the Women, Infants, and Children welfare program.

It's not that McCain doesn't ring the right libertarian policy bells. He just rings them cautiously. "Among" the solutions for America's K–12 educational malaise, according to McCain, are "vouchers and charter schools." On Social Security reform, perhaps the most significant policy issue likely to face the Senate this year, McCain is "pleased that the majority of the American people are now saying that privatization or some kind of privatization should be part of the debate." On tax reform, he "favors the flat tax" and setting a "cutoff date for the IRS code."

On encryption, however, he's "in a terrible quandary," since the national security establishment opposes strong privacy protections. Says McCain: "I'm not about to take a position which the people to whom we entrust our national security say would endanger us." If not you, Mr. War Hero, then who?

In fact, McCain is downright hostile to the unaristocratic notion that individuals have a fundamental right to pursue happiness as they see fit as long as they do not hurt other people. "The guy's a busybody," says the Cato Institute's Ed Crane. "He just wants to butt into everyone else's business."

The senator is an avid drug warrior who opposed Arizona's medical marijuana initiative. "It's a misguided proposal," says McCain. "We are opening the door to the abuse of all kinds of illegal drugs." He is the chief sponsor of a Senate bill that would require schools and libraries to install Internet filters. "Pornography and child pornography," he says, "are serious problems." And McCain has devoted serious time to ensuring that ultimate fighting—a free-form, unscripted combination of martial arts and pro wrestling—is effectively banned in much of the country. "There are lots of things we prevent consenting adults from doing," he said on *Larry King Live.*

In the end, it looks likely that McCain's maverick sense of virtue will keep him from any serious run for the presidency. Although his bravery and charisma might serve him well in a general election, GOP primary voters care about political consistency. The party's traditionalist and libertarian wings may bitterly oppose each other, but they both profess a definition of principle that is bourgeois, impersonal, and quite foreign to McCain. It is not enough to be honest, stubborn, and loyal.

"In this country we have two parties," says the ACU's David Keene. "One of them is the pro-government party; one of them is the anti-government party. If you are going to be a leader in the anti-government party, you can't be seen as pro-government every step of the way." ◆

Michael W. Lynch (mlynch@reasondc.org) is REASON*'s Washington editor.*

Why Not Open Borders?

by Jacob G. Hornberger

Thirty years ago, Democrats and Republicans sent 60,000 men from my generation to their deaths in an undeclared war in Southeast Asia. The rationale? To save people from the horrors of communism.

Apparently communism is not so horrible anymore. Today, if Cuban citizens flee communist tyranny, the biggest danger they face is the United States government's forcible repatriation of Cuban refugees into communist tyranny.

Of course, this is only one of the many ways that Democrats and Republicans abuse and mistreat Hispanics. For decades, they have jailed illegal immigrants for committing the heinous crime of crossing the border in search of work. They also arrest and prosecute American citizens for giving work to illegal immigrants. INS deportation raids on both homes and businesses leave nothing but tears and anguish in their wake.

Is all this necessary for a nation that takes such great pride in the Statue of Liberty? We Libertarians don't believe so. Why not simply open the borders to both free trade and open immigration? Why shouldn't people be free to travel, trade, visit, and engage in peaceful activity?

"But everyone would come to America." Not likely. It is extremely difficult – financially, emotionally, and culturally – to pull up roots, leave family and friends, and move to a foreign country, especially one in which people speak a different language. That's why many immigrants soon return to their homelands. Those who come and stay are usually the risk-takers – those who are willing to give up security for the chance of improving their lot in life. They should be cherished, not punished, for they bring a vitality that energizes a society. Moreover, the removal of American trade restrictions against other countries – like the embargo against the Cuban people – would increase economic prosperity in those countries, diminishing the economic incentive for people in those countries to migrate.

"They'll take jobs from Americans." On the contrary – immigrants create jobs for Americans! While often displacing Americans in lower-echelon jobs, their consumption of food, housing, cars, electronics, and other goods and services develops higher-echelon jobs for Americans in those sectors.

"They'll go on welfare." Then Congress should prohibit them from doing so and punish any bureaucrat convicted of distributing illegal welfare. There is no constitutional requirement that foreign citizens be entitled to use government to plunder the wealth of American citizens. Anyway, as many Americans have discovered, government welfare is a political drug that destroys the human spirit. Immigrants, like Americans, are better off without it.

"They'll burden government services." Then privatize them. Notice that it's always the public sector – public schools, public hospitals, public roads – that complains about too many customers. When was the last time you heard Microsoft, Sears, Disney, or McDonalds complaining about too many customers?

"They'll pollute our culture." American culture should be one of freedom – one in which everyone is free to pursue any cultural interest he wishes. After all, it was America's culture of freedom that motivated the French to give us the Statue of Liberty.

Open borders would not only raise the standard of living of both foreigners and Americans, it would also help to restore a sense of morality and civility to American society. How can it be considered moral and civil to forcibly repatriate people into communist tyranny? To incarcerate people for wanting to work? To punish employers for hiring them? How can any of this be reconciled with loving thy neighbor as thyself?

A decade ago, one of the ugliest walls in history was torn down. It is time to tear ours down as well. We don't need governmental barriers that separate families, friends, and businesses. We need *abrazos* and handshakes that bring people together.

Mr. Hornberger is president of The Future of Freedom Foundation in Fairfax, Va., and is co-editor of The Foundation's book, *The Case for Free Trade and Open Immigration.*

THE FUTURE OF FREEDOM FOUNDATION
11350 Random Hills Road, Suite 800
Fairfax, VA 22030
Phone: (703) 934-6101 • Fax: (703) 352-8678
E-mail: FFFVA@compuserve.com
www.fff.org

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HINKERS

"New Urbanism," the latest fad in urban planning, promises less traffic, better air, and lower taxes. Here's what it really delivers.

By Randal O'Toole

In 1992, residents of Portland, Oregon, were terrified that their growing city was fast becoming the Pacific Northwest's version of Los Angeles—as they saw it, a congested, polluted city with too many cars and too little sense of community. The threat was considered so serious that a traditional anti-growth response—a tough, comprehensive land-use plan limited to the actual city boundaries—wasn't enough. To prevent the paving of Portland, area voters signed off on the creation of Metro, a regional planning authority with dictatorial land-use planning powers over 24 cities and three counties.

To hear Metro boosters describe it, Portland-area residents can now rest easy. The concrete landscape of Southern California won't be copied any time soon in the Beaver State. Far from it. Though Metro's experts predict that the region's population will grow by 75 percent in the next few decades, the agency has a plan that will accommodate these newcomers while promoting "livable neighborhoods," "protecting open space," "reducing dependence on the automobile," and maintaining "affordable housing" and lower infrastructure costs. All in all, an idyllic package: better neighborhoods, pedestrian-friendly streets, cheaper housing, and lower taxes.

What will it take to reach such goals? Only the community's desire—as codified in Metro's planning and zoning laws—to squeeze more people and more businesses into smaller spaces under tighter regulatory control. Metro's regional plan restricts development outside of an urban growth boundary that allows only a 6 percent expansion of the urbanized area for at least two decades. The plan also doubles or triples the population density of many neighborhoods by rezoning them to require apartments, row houses, or other high-density housing whenever new construction is undertaken.

Additionally, Metro sets strict population targets for each of the 24 cities and three counties under its dominion, forcing them to convert 10,000 acres of prime farmlands, golf courses, city parks, and other open spaces to high-density residential or commercial uses. Finally, Metro plans to spend billions of dollars to build 100 miles of rail transit lines to free residents from their cars.

PETER BENNETT

Reduced congestion, better air quality, lower taxes. No wonder Portland has gotten great national press and praise. There's only one little problem: Metro's own data say the plan is doomed to failure.

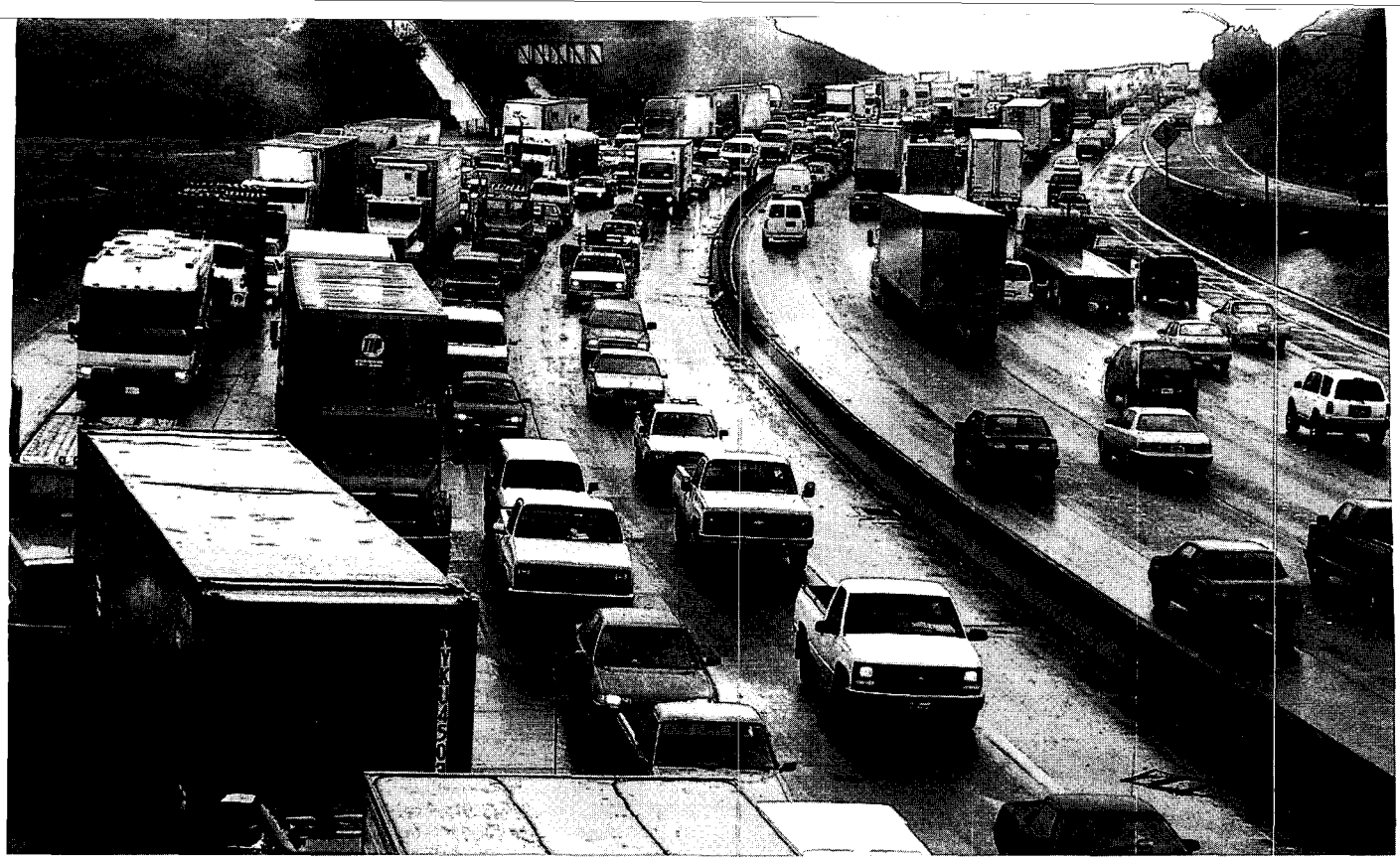
Details, Details

Consider, for instance, Metro's bold, confident prediction that its plan will double public transit usage. Since transit currently carries less than 2.5 percent of Portland-area trips, doubling that doesn't get you very far toward a car-free utopia. Similarly, Metro expects at best a modest decline in auto usage, from 92 percent of urban trips to 88 percent. In fact, given the 75 percent population increase that Metro predicts over 50 years, that translates into *five* cars driving around for every *three* cars today. Accordingly, planners estimate that traffic congestion will triple or quadruple and that air pollution will increase.

Then there's the tax question. Metro wants to pay for the rail lines it says will lure people out of autos by adding billions of dollars to local property taxes. And to promote high-density development in an area already glutted with apartments, Portland and other area cities are giving developers millions of dollars in tax breaks and other subsidies that will ultimately come out of residents' pockets. Meanwhile, housing prices are skyrocketing because of the artificial land shortage created by the urban growth boundary, giving Portland the least affordable housing in the nation after only San Francisco.

Oh, and there's one more thing. Remember how Metro was supposed to save Portland from becoming Oregon's answer to L.A.? In 1994, Metro planners studied the nation's 50 largest urban areas to see which one was closest to the future they envisioned for Portland—one with higher population densities and fewer roads. It turned out that the metropolitan area—defined as all of the land in and around a city whose population density exceeds 1,000 people per square mile—with the highest population density also had the fewest miles of freeway per capita. Its name: Los Angeles. While the *city* of Los Angeles proper has a lower density than New York City, the Los Angeles metro area is nearly one-third denser than the New York metro area, which includes—among other places—northeastern New Jersey and Long Island. Far from being the incarnation of evil, auto-dependent sprawl, L.A. was the model to emulate.

To their credit, Metro planners did fess up to this unexpected and uncomfortable finding, daring to write, "With



L.A. IS THEIR LADY AFTER ALL: Though Portland's planners used fear of becoming like Los Angeles to drum up support for their draconian land-use regulations, they grudgingly admitted the Los Angeles metro area—which has the highest population density and fewest miles of freeway per capita in the nation—displayed "an investment pattern we desire to replicate."

respect to density and road per capita mileage, [Los Angeles] displays an investment pattern we desire to replicate" in Portland. Of course, saying this out loud would have meant instant death for their plans, if not their persons. So the document in which this conclusion is reached is available only to people willing to pay $10 for a 60-page booklet filled with eyeball-glazing graphs and statistics.

Here's another irony: Despite such glaring and self-evident contradictions, Portland has become a shining beacon for urban planners, who envy Metro's Singapore-like regulatory authority. Places ranging from Minneapolis-St. Paul (with a metro population of about 3 million) to Missoula, Montana, (43,000) have adopted plans based on the Portland model.

Suburban Renewal

Welcome to the crazy world of the New Urbanism, the latest fad in urban planning. The New Urbanism is a broad-based movement of planners, architects, environmentalists, central city governments, downtown business interests, transit agencies, and engineering and construction firms that has coalesced over the past 10 years. Proponents seek to recreate the high-density cities of the 19th and early 20th centuries. To impose their will, New Urbanists take particular aim at suburbs and the automobiles that helped make them possible. Indeed, a more appropriate name for the movement might be Suburban Renewal, since the New Urbanists' chief goal is to convert the suburbs—invariably regarded as banal, ugly, sterile, and inefficient—into something like inner-city areas.

A recent Sierra Club study, "The Dark Side of the American Dream," is representative of New Urbanist thinking. "The automobile way of life is unhealthy, anti-social, and unsustainable," claims the report, which was partly funded by the U.S. Environmental Protection Agency. The New Urbanism, in contrast, seeks to create neighborhoods "where jobs, shopping, services, and recreation are all nearby" so that people can get around without cars. Low-density suburban development—pejoratively termed "sprawl"—leads to "increased congestion, longer commutes, increased dependence on fossil fuels, crowded schools, worsening air and water pollution, lost open space and wetlands, increased flooding, destroyed habitat, higher taxes and dying city centers."

None of these claims is documented, which isn't surprising, because none of them is true. What *is* true is that the Sierra Club, the American Planning Association, and other New Urbanists have definite ideas about how the suburbs should be rebuilt. Their plans usually call for the following:

- Urban growth boundaries to restrict suburban expansion.
- Prescriptive zoning and development subsidies to force higher-density development inside growth boundaries. Prescriptive zoning mandates higher densities whenever building or rebuilding occurs. If your house burns down, you may even be required to build an apartment in its place.
- Discouraging driving through "traffic calming" measures

AP / WIDE WORLD PHOTOS

such as narrow streets, parking limits, roadway barriers, and zoning codes that require shopping malls to turn their parking lots into apartments. There may also be rules requiring employers to write up plans to reduce workers' auto commuting.

■ A focus on hugely expensive—and hugely ineffective—rail transit to the exclusion of highway construction or expansion.

New Urbanists firmly believe they can change people's behavior by redesigning the cities in which they live. That's not an indefensible notion, but it's not as easy as it sounds. Consider the fate of Laguna West, a widely touted Sacramento suburb designed by California architect and New Urban guru Peter Calthorpe. Calthorpe thinks suburbanites suffer from a "sense of frustration and placelessness." To fix this, he designs what he calls "pedestrian pockets" or "transit-oriented developments" that plug people into where they live.

As envisioned by Calthorpe, Laguna West would have consisted of a "transit center" surrounded by high-density apartments and condominiums. A ring of single-family homes on small lots would surround the high-density core. Scattered throughout would be stores, offices, and other commercial uses. Most people would be able to walk to shopping, and many would be able to walk to work or the transit center.

But Laguna West was a financial failure. No one wanted to live in the high-density area, and as a result its developer went bankrupt. Instead, a new builder put low-density housing in the core. While those houses were actually salable, their presence also meant that most transit riders had to drive to the transit center. Since Calthorpe provided no parking at the transit center, drivers parked in front of other people's homes. The homeowners objected and successfully lobbied to have the transit center moved outside of the development. Meanwhile, residents do all of their shopping at a conventional strip mall outside the development. The only commercial use inside Laguna West—a quick oil-change joint—hardly testifies to people's decreased dependence on the auto.

If it's hard to design a successful suburb from scratch, it's that much more difficult to shift residents from already established patterns of land use and behavior. But urban planners all over the country are trying to impose New Urban ideals on existing suburbs and cities. Metro even hired Calthorpe to show them how pedestrian pockets and transit-oriented developments could be scattered throughout the Portland area.

Congestion as "Positive Urban Development"

The vision of a place where people walk to the grocery store and take the train to work certainly has its charms. But far from delivering urban zones from the curse of "auto-dependent" lifestyles, New Urbanist policies have consistently led to significant increases in highway congestion; deteriorating air quality (because autos pollute more in slow-moving, congested traffic); dramatic infrastructure shortfalls as sewer, water, schools, and other systems designed for low-density cities must be rebuilt for higher densities; rapidly increasing housing prices as land becomes scarce; and disappearing urban open spaces such as parks and golf courses as developers turn them into residential and other developments. Such negative outcomes are not accidental. Indeed, they are the predictable, inevitable, and often *intended* consequences of New Urbanist plans.

Consider the New Urbanist claim that increased population density will reduce traffic congestion. The idea makes some intuitive sense: If people are closer to one another, to jobs, and to shopping, they won't need to drive so much to get to their destinations. But the reality is that while higher population density may slightly reduce per capita driving, it vastly increases congestion and pollution. Say, for instance, that doubling density reduces per capita driving by 10 percent. Two hundred percent as many people each driving 90 percent as much results in 180 percent as many cars. Unless the road network is expanded by 80 percent—which New Urbanists would oppose—80 percent more traffic produces a huge increase in congestion.

Real-world experience suggests that 10 percent less per capita driving with a doubling of density is about the best that can be expected. In fact, it may be overly optimistic. What's more, Census Bureau and Federal Highway Administration data show little correlation between density and the number of miles people drive. The Miami, Ft. Lauderdale, and West Palm Beach metropolitan areas all cover about the same number of square miles. Miami has twice the density of West Palm Beach, and per capita driving is indeed about 10 percent less in Miami. But residents of Ft. Lauderdale, whose density is halfway between those of Miami and West Palm Beach, drive more than residents of both areas.

In Portland, planners have used a sophisticated computer model to predict the effects of their plans on driving habits. Under their most optimistic scenarios, by the year 2040, auto use will drop from 92 percent of all area trips to 88 percent. Since planners assume a 75 percent increase in population, this translates to a massive expansion in traffic and congestion—they figure three to four times the current number of congested road miles.

But that's OK, say Metro officials in one of their we've-got-to-destroy-the-village-in-order-save-it moments, because congestion actually "signals positive urban development." Indeed, though they rarely talk about it in public, a major short-term New Urbanist goal is to *increase*, not reduce, congestion. After all, clogged, slow-moving traffic might encourage a few people to get out of their cars, while punishing those who do not.

Minnesota's Twin Cities Metropolitan Council takes a similar view of increased congestion. In addition to planning the Minneapolis-St. Paul region, the council runs the area's public transit system. Bus ridership has declined by 40 percent in the past 25 years, while highway traffic has greatly increased, with further increases projected. So what does the Metropolitan Council plan to do? Build no more roads for at least 20 years. The council wants to promote ridership on its buses by increasing highway congestion to intolerable levels. "As traffic congestion builds," says the council's Transportation Plan, "alternative travel modes will become more attractive." Of course, as congestion builds, alternative places to live will become more attractive too.

If New Urbanist attitudes toward traffic congestion are muddled—they seek to alleviate traffic congestion by increasing it—their attitudes toward commuting are no less contorted. As with the assumed relationship between density and miles

driven, the real world refutes New Urbanist claims that low-density suburban development forces people to spend more time commuting. Census data show that, regardless of the year or the urban area's size, commuters spend an average of 20 to 25 minutes getting to work. This is as true in Los Angeles (with a metro area population of 12 million) as it is in Houma, Louisiana (68,000).

Indeed, if New Urbanists were really concerned about long commutes, they would advocate more road construction and less emphasis on mass transit: The average public transit commuter travels a shorter distance yet spends more time commuting than the average driver. The first-, second-, and third-longest average urban commute times are in New York, Washington, and Chicago—which, not coincidentally, are the urban areas with the first-, second-, and third-highest shares of commuters riding mass transit.

A similar paradox undergirds New Urbanist air quality policies. Since automobiles pollute the air, New Urbanists convinced Congress to deny federal highway funds to cities with significant air pollution problems. Not only does that policy make it tough for congested areas to build bigger highways, it almost certainly makes pollution worse in those cities. That's because most auto pollution is a function of congestion and density: Cars use more energy and pollute more when they drive slowly or in stop-and-go traffic than when they drive fast in free-flowing traffic. The best prescription for reducing air pollution, then, is to reduce congestion by adding highway capacity or making other improvements to speed up traffic.

Dirty air is also a function of density, which promotes the concentration of dangerous levels of pollutants. The EPA rates urban air pollution as extreme, serious, moderate, marginal, and none. Not surprisingly, the worst pollution is found in the urban areas with the densest populations (see chart). Thus, the New Urban prescription of increased density with few new roads doubly increases urban air pollution.

Sprawling Costs

Worsened air quality is a price New Urbanists apparently are willing to pay. But when it comes to what they call "the costs of sprawl," they're not so generous. As with most of their core beliefs, New Urbanist cost analyses of suburban development rely more on faith than on empirical data. Hence, a 1974 Council on Environmental Quality report arguing that low-density development imposed higher costs for urban services—roads, sewers, schools, and the like—than higher densities remains a holy text among the New Urbanist faithful. That the document was based entirely on speculative and unverified estimates doesn't seem important; neither does the fact that numerous studies since that time have found that taxes and urban service costs are actually higher in high-density areas.

Average Urban Area Population Densities by EPA Air Pollution Rating

RATING	AVERAGE DENSITY
Extreme	3,362
Serious	2,378
Moderate	2,077
Marginal	1,744
None	1,505

Source: EPA

A 1992 Duke University study, for example, analyzed data from 247 counties that contain well over half the population of the United States. The researchers found that, above a density of 250 people per square mile (which is a rural density), costs rose as densities increased. In fact, urban service costs in areas of 24,000 people per square mile—a density typical of the core of older cities such as Philadelphia and Boston—were nearly 50 percent greater than in areas of 250 people per square mile.

But even if a new high-density development did impose lower costs than a low-density development, it does not follow that it costs less to rebuild a low-density suburb to high densities than it would to simply build a new low-density suburb. That's because infrastructure such as sewers, water, roads, and schools are built for the densities they serve. Suddenly doubling densities means tearing up streets for utilities, widening roads (or increasing congestion), and buying land for new schools.

Residents of San Diego know all about that. In 1980, the city adopted a New Urban plan that discouraged development outside of an urban ring and promoted "infill" development in the core area ("infill" is the development of vacant lots and redevelopment of existing residential areas to higher densities.) Ten years later, the sewage system was regularly breaking down, traffic congestion had significantly increased, and the city estimated that it needed $1 billion to bring urban infrastructure up to its 1980 levels. Ironically, the Sierra Club cited San Diego as one of the nation's worst examples of sprawl.

In a related way, New Urbanists get it backward when it comes to housing and living costs: Policies they think will lead to cheaper housing and living costs actually make things more expensive. In low-density cities such as Houston and Minnesota's Twin Cities, land represents a tiny fraction of the value of a home. In higher-density cities, it's common for land to account for half or more of the value of a home. This means that people of a given income level in a high-density city can afford less house than they might buy in a low-density area. That's one reason why the suburbs are so popular—you tend to get more house (and property) for the money.

The same basic economic reality affects retailing as well. A major reason why megastores and supermarkets gravitate to the outskirts of areas is that land is cheaper and allows for bigger buildings. The New Urbanist dream of shopping at a corner market may be quaint, but it ignores two basic things people look for in stores: good prices and a wide selection of products, neither of which is characteristic of small shops (as any inner-city grocery shopper will tell you). Stores get bigger when they can serve more people. When they get bigger, they can offer a greater variety of products, fresher produce, and lower prices than small stores. Corner grocery stores might serve the occasional emergency need

WALK OF LIFE: Supporters point to Portland's Northwest 23rd Avenue (above) as a good example of how the New Urbanism "succeeds." There, planners say, people are learning to walk more. That's true, largely because they can't find a place to park that's less than a 10-minute walk from their destination.

for a quart of milk or six-pack of beer. But most people will do most of their shopping where choices are greater and costs are lower—which means that they will shop by car.

In spite of New Urbanist claims, such residential and retailing mobility hasn't led to unchecked sprawl. According to the U.S. Department of Agriculture, more than 95 percent of the lower 48 states remains undeveloped. In fact, the vast majority of Americans live in the less than 3 percent of the country that is urbanized (defined by the Census Bureau as more than 1,000 people per square mile). The only open spaces that are truly threatened are golf courses, u-pick farms, and large suburban backyards. All are targeted by New Urbanists for "infill" development. Portland is even selling park lands at discount prices to entice developers into building high-density apartments.

The Congestion Coalition

Despite its theoretical and practical failings, the New Urbanism is quietly sweeping the nation. Portland's Metro recently passed the most restrictive plan ever adopted for a U.S. city. The legislatures of Maryland, Minnesota, and Washington have enacted "smart growth" or "growth management" laws, both New Urbanist euphemisms. Pressure groups in Denver, Phoenix, Albuquerque, Tampa, and other cities are demanding and getting New Urbanist plans for their communities. If you live in a metropolitan area, your city planning bureau is probably infested with New Urbanists.

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This success is all the more remarkable given the manifest and widely recognized failure of grand, utopian planning schemes. As Jane Jacobs' *The Death and Life of Great American Cities* (1961) showed, the urban renewal movement in the 1950s and '60s destroyed living communities and replaced them with sterile monuments to human arrogance. In *Nowhere to Go* (1988), Fuller Torrence credibly blames much of the homeless problem on planners who demolished the low-income apartments where many of these people lived. Planners also created many of the public housing disasters of the past few decades. The history of urban planning is a lesson in the law of unintended consequences.

How do the New Urbanists respond to the failure of their forebears? They not only admit that past planners made mistakes, they themselves blame most urban ills on previous generations of planners. Their perverse, if savvy, solution is to give planners *more* power, so they can correct past mistakes through even stronger rules and regulations.

New Urbanist supporters include planners, environmentalists, federal bureaucrats, central city officials, downtown businesses, and construction companies. Their motivations range from idealism to economic self-interest, but all have a stake in maintaining or rebuilding tightly packed urban cores. Together, they also have the clout to get things done.

Planners and environmentalists are among the idealists in what can be dubbed the "congestion coalition." Recognizing that traffic congestion is one of the major concerns of urban residents,

RAIL BARREN: Metro and local governments gave the developer of this 35-unit per acre apartment building $400,000 in tax breaks and subsidies. Portland has had to offer builders 10 years of tax waivers to promote development near light rail. The result of such public-sector largess: Only one out of nine commuters who live in apartments like these uses light rail. The rest drive.

most New Urbanist planners no doubt think their convoluted approach will eventually alleviate the situation. (To put a more cynical spin on their designs, they can at least rest assured that increases in congestion caused by their plans will lead to calls for more planners.) Environmentalists' idealism is less concerned with urban quality of life per se than with preserving what they see as pristine wilderness; New Urbanist nostrums of denser urban areas and less automobile usage are means to that end.

By themselves, however, planners and environmentalists are not powerful enough to persuade anyone to implement the New Urbanism. That's where the other members of the congestion coalition come in. If planners and environmentalists supply the vision, bureaucrats, local officials, downtown businesses, and contractors provide the money and the might to make New Urbanist dreams a reality.

A number of friendly federal agencies directly finance the New Urbanist agenda. For instance, as part of its Transportation Partners program, the EPA gives several hundred nonprofit organizations money to lobby for transit and pedestrian ways and against highways. The avowed goal of the program is to reduce the number of "vehicle miles traveled." (In true New Urbanist fashion, the claims to success are meager at best: The EPA boasts these "partners" reduced annual vehicle travel by 1.25 billion miles in 1997. That's a questionable figure, but even if valid, it represents less than 0.1 percent of all urban driving.)

The U.S. Department of Transportation also supports the New Urbanism. The Federal Transit Administration, the branch of the department charged with promoting transportation planning, strongly influences urban spending because New Urbanists convinced Congress that cities receiving federal transportation funds should be forced to create regional transportation plans. The onerous planning process gives New Urbanists plenty of opportunities to skew the results their way. For example, federal transit officials grade local transportation planners for the effort they make at getting cyclists, pedestrians, and transit riders—but not auto drivers—involved in the planning process. The transportation bill recently passed by Congress provides $20 million a year in local grants similar to the EPA's Transportation Partners program.

New Urbanism is also supported by DOT and Department of Housing and Urban Development requirements that urban areas have metropolitan planning organizations (MPOs) representing most or all local governments. Originally conceived as clearinghouses for federal grants, many MPOs function instead as political safety valves. As Brookings Institution economist Anthony Downs notes in *Stuck in Traffic* (1992), a regional planning agency "can take controversial stands without making its individual members commit themselves to those stands. Each member can claim that 'the organization' did it or blame all the other members."

Urban Godsends

That's exactly what has happened in Portland, where Metro has ultimate planning authority over two dozen cities and three counties. Metro requires these cities and counties to rezone existing neighborhoods to meet its population targets. Far from resisting such targets, many cities view them as a way to increase

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their tax base by packing more residents into their jurisdictions, and some even asked for higher ones. But when neighborhoods object to being rezoned, they are told, "We don't have a choice. Metro is making us do it."

The turn to MPOs is a godsend especially to officials in large cities seeking to consolidate, if not increase, their power, which has been on the wane for most of the postwar period. Since 1950, nearly all urban growth has been outside big cities. That massive population shift toward suburbs and mid-size cities has made it tougher for traditional central cities to generate tax revenue and to qualify for pork-barrel spending tied to population. The MPOs change all that.

Because of its relative size, the strongest player in any MPO is invariably the largest city in the region. The MPO gives such cities an instrument to redirect development dollars their way and to get revenge on the suburbs (tellingly characterized as "godawful trash" by one Portland City Council member). The same holds true for downtown business interests: Like their public-sector counterparts, they resent the shopping malls, office campuses, and modern factories that have grown up in the suburbs. For central city officials and businesses, then, the New Urbanism represents the latest ploy to maintain their way of life.

Of course, it's unlikely it will succeed any more than the billions of federal and local dollars already spent trying to maintain particular urban areas. The problem with most central cities is that they were built in an age when primitive transportation and communications dictated high densities; people had to live near one another. The "decline" of cities that officials worry so much about is due to the fact that cars, telephones, and electricity make it possible for people to live in lower densities—and most choose to do so.

Fretting over urban "decline" is misguided in another sense too. Downtown interests, argues Joel Garreau in the brilliant *Edge City* (1991), "believe settlement patterns to be a zero-sum game": Any gain in the suburbs represents a loss for downtown. Yet Garreau notes that even as suburbs have boomed, American "downtowns have been going through their most striking revivals of this century. From coast to coast...downtowns are flourishing."

To be sure, most recent downtown growth has been in the areas of arts and entertainment. This fails to impress downtown traditionalists, who still think downtowns should be the main retail and commercial centers of a city. So New Urbanist prescriptions, such as limits on new shopping malls and parking restrictions in existing malls, are appealing to downtown businesses. If new stores can't open in the suburbs, goes this line of thought, they'll have to set up shop downtown.

Such zero-sum thinking undergirds what is perhaps *the* defining characteristic of the New Urbanism: an undying reverence for light-rail networks. Central city officials and downtown interests know that, if transportation dollars go into highways, they will be spent in the suburbs, where most growth is taking place. But if those funds are spent on a rail transit system, the vast majority will be spent in the central city because most, if not all, rail lines will radiate from a downtown.

Light rail not only restores to downtown some of its former centrality, it represents a huge pork-barrel project for the fifth member of the congestion coalition: the civil construction industry. With the Interstate Highway System effectively completed and strong resistance to new roads in the cities, the construction industry has been looking for work. What better opportunity exists than to rebuild the rail systems that moved urbanites in the pre-automobile age?

New Urbanists spuriously claim that light rail is more efficient than highways. For the construction industry, the attraction of rail systems is that they cost much more to build than highways. A typical urban freeway costs about $5 million to $10 million per lane-mile, or $20 million to $40 million per mile of four-lane road. By comparison, Portland just opened a new light-rail line that cost $55 million per mile—and is planning a new line that will cost a whopping $100 million per mile. (That neither of these lines will carry as many people as a single freeway lane is the sort of consideration that never seems to make it onto the planner's ledger sheet.)

Light rail isn't always as expensive as in Portland, but its costs when finished are almost always far greater than when originally proposed. For the construction industry, then, rail is not only less controversial than highways. Because of typical cost overruns and "gold-plating," rail adds up to huge profits for a wide variety of consulting, engineering, and building firms.

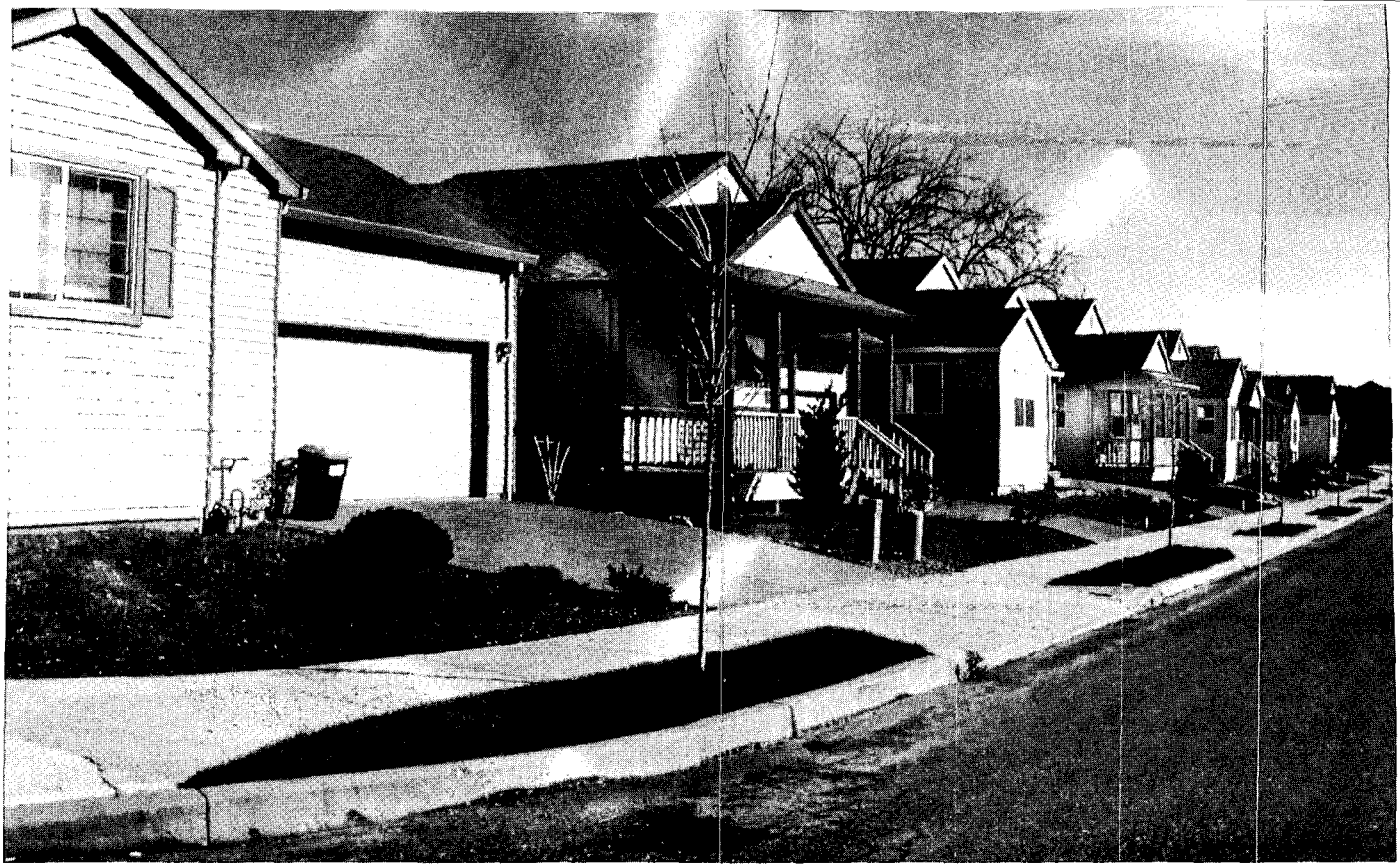
Light rail does nothing to reduce congestion; in fact, because most transit systems sacrifice more-popular bus routes once they introduce less-popular trains, it typically *increases* congestion. But that is not the construction industry's concern. So long as New Urban interests can channel money toward rail, the construction industry will be only too happy to finance the political campaigns of New Urbanist city officials and any ballot measures that might be required to obtain local rail funding.

The Metro Dilemma

Given the strength of the congestion coalition, it's no surprise that the New Urbanism has gotten as far as it has. While the movement has visible critics—including Joel Garreau, Peter Gordon of the University of Southern California, and John Charles of the Portland-based Cascade Policy Institute—sometimes it seems as if it is an unstoppable civic juggernaut. Beyond underscoring its inconsistencies and misrepresentations, one way of challenging the New Urbanism is to recognize its place in the urban planning tradition.

Far from being the "scientific" and "rigorous" school of thought its proponents claim, the New Urbanism is best understood as simply the latest attempt by planners to pass narrow, essentially moral judgments on American cities. Beginning with the "City Beautiful" movement in the late 19th century, planners believed that good design would lead to a "new urban man" who would be a morally upright member of the community. Given the proper architectural circumstances, planners theorized, urban residents would work hard and not turn to crime; social ills such as drunkenness would disappear.

Early land-use planners believed that the crowded, dirty cities where houses were mingled with factories and commercial uses should be replaced by low-density residential areas separated from other uses. There, workers would be free from easily trans-



SUNNYSIDE UP (WAY UP): Due to Portland's urban-growth boundary, its Sunnyside area has seen land prices hextuple over the past seven years. The neighborhood, which features single-family homes built on 50-foot-by-50-foot lots, was designed by New Urbanist guru Peter Calthorpe. But virtually all residents continue to *drive to work and shopping.*

mitted diseases and have cleaner air. A few decades later, in the 1920s, early transportation planners hoped that good roads would revitalize downtowns—threatened even then by "sprawl"—by reducing congestion and attracting new investments. But all the freeways did is give residents and employers a quicker escape from the crowded central cities.

New Urbanism has learned well the lesson that roads let people go where they want to go. They've wedded that insight to the early land-use planners' goal of improving people's moral behavior. The immoral behavior New Urbanists want to end now is driving, which they see as wasteful, noxious, and antisocial. Interestingly, to stop people from driving, they are trying to turn entire urban areas into the crowded, mixed-use cities that 19th-century planners found so degrading. "The politics of stasis," says interstate highway historian Mark Rose, "has displaced the politics of growth." What hasn't changed is the belief that people cannot or should not be left to their own devices when it comes to deciding where and how to live their lives.

If the New Urbanists put the actual quality of life of urban residents ahead of their theories about quality of life, they would chart a vastly different course. The best prescription for the central cities is to let them depopulate as people move out to the suburbs. As their densities fall, they will become more attractive places to live. This has happened in Cleveland, the former national joke which has become one of the more livable cities in the Midwest. But such a policy bruises the egos of the city officials who want to maintain political hegemony over the suburbs; it also fails to satisfy the demands of the rest of the congestion coalition.

So the New Urbanists turn instead to regional planning, growth boundaries, suburban "densification," congestion-inducing road policies, and light-rail transit. This is a prescription for destroying not only the central cities but the suburbs as well. As baby boomers retire and telecommuters increase, fewer and fewer people will need to live in urban areas. If the New Urbanists succeed in making the suburbs as unlivable as many central cities already are, people living in cities and suburbs are likely to become "exurbanites," moving out to rural areas. Exurbanization will be sprawl with a vengeance, as people forbidden to live on quarter-acre suburban lots happily move to five-to-40-acre rural lots.

A recent survey of Portland residents should give the New Urbanists pause, even as it apparently confirms their agenda. The poll found that most Portlanders do in fact support Metro's plan. But then the poll asked where people would live if they had a choice: the city, the suburbs, or rural areas. The same majority said "rural areas." That response might seem odd, but it's in keeping with the New Urbanism, which produces in abundance everything its adherents claim to oppose: congestion, pollution, unaffordable housing, and higher taxes.

Randal O'Toole (rot@ti.org) is an economist from Oak Grove, Oregon, who is currently teaching conservation policy at Yale University.

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Constitutional Challenge

Repealing the 16th Amendment wouldn't kill the income tax.

By David B. Levenstam

Sen. Richard Lugar (R-Ind.), House Ways and Means Committee Chairman Bill Archer (R-Texas), and the Cato Institute's director of fiscal policy studies, Stephen Moore, all want to replace the federal income tax with a national sales tax. They say that repealing the 16th Amendment will eliminate the income tax. They're wrong. Income taxes existed—and were considered constitutional—before the 16th Amendment.

Ratified in 1913, the 16th Amendment states: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." The amendment gives Congress carte blanche to impose virtually any sort of income tax it desires—including our current labyrinthine system with its multiple rates, surtaxes, alternative taxes, deductions, phase-outs, double taxation of corporate earnings, and tax on phony gains caused by inflation. The current system also includes a combined tax on estates and gifts known as the unified transfer tax.

But contrary to popular belief, repealing the 16th Amendment wouldn't eliminate Congress' power to impose an income tax, because not all income taxes were held unconstitutional by the Supreme Court before the 16th Amendment was ratified. From 1861 to 1872, Congress imposed income taxes without any interference from the high court. In fact, in the 1881 case, *Springer v. United States*, the Court upheld the 1864 income tax. From 1862 to 1870, Congress imposed inheritance taxes, which applied to certain gifts as well. In 1874 the Supreme Court upheld the Civil War inheritance taxes in *Scholey v. Rew*, categorizing an inheritance tax as an excise or impost rather than a direct tax.

Embarrassed by large federal budget surpluses and facing re-election in 1872, President Grant and Congress allowed the income tax to lapse. Pressure from voters had already led Congress to repeal the inheritance tax before the 1870 elections.

But budget surpluses then and for the next 30 years didn't prevent supporters of the earlier income tax from clamoring for another one. From 1874 through 1894, members of Congress introduced 68 bills that would have imposed an income tax. Supporters and opponents alike viewed the income tax as "class legislation"—an attempt to redistribute income. Supporters believed that the tax system in use at the time, which relied primarily on tariffs, was regressive, and therefore unfairly distributed income away from the poor to the wealthy. Supporters hoped the income tax would stop or at least reduce regressive redistribution. Opponents saw the income tax as an attempt to set the poor against the wealthy and redistribute income away from those who generated it.

By 1894, a majority in Congress came to support some form of income taxation. It passed a law which imposed a 2 percent flat tax on corporate net income, and on individual incomes in excess of $4,000 ($76,000 in 1998 dollars).

Unlike the current system, however, the 1894 law didn't tax dividends, thus avoiding the current double taxation of corporate income. While the law didn't establish a gift or estate tax, it did include the value of gifts and estates in the income of the recipient for purposes of calculating the income tax.

Opponents of the income tax immediately challenged it in court. In 1895, the Supreme Court, in *Pollack v. Farmers Loan and Trust Company*, struck down the 1894 income tax as unconstitutional. But the Court didn't rule that every federal income tax would be unconstitutional.

At the core of the *Pollack* decision is the distinction between direct and indirect taxes. Article I, Section 9, paragraph 4 of the Constitution stipulates that "No Capitation [head], or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." "Publius"

ARCHIVE PHOTOS

Taxing Bastard: In 1796, Alexander Hamilton as chief counsel for the government persuaded the Supreme Court that taxes on personal property were constitutional.

(presumed to be Alexander Hamilton), in *Federalist* 22, held that taxes "of the direct kind, which principally relate to land and buildings, may admit a rule of apportionment. Either the value of the land, or the number of the people, may serve as a standard." In the 1796 case, *Hylton v. U.S.*, Hamilton, as chief counsel for the government, persuaded the Supreme Court that only head taxes and taxes on real estate should be considered direct taxes. A tax on tangible personal property, such as carriages, was not a direct tax.

So in ruling on the constitutionality of the 1894 income tax in *Pollack*, the Court faced a century-old precedent holding that the only taxes Congress could not impose without doing so proportionately among the states were head taxes and real property taxes. Opponents of the income tax argued that taxing income from property was the equivalent of taxing the property itself.

Determined to stop what they (correctly, it seems) saw as an entering wedge for wide-scale income redistribution, a majority of the eight justices who initially heard the case accepted the argument and expanded the list of direct taxes to include taxes on the income from real property. The Court also ruled unanimously (on this issue) that a federal tax on income from state and local bonds infringed the right of states and their subdivisions to borrow money.

And after the ninth justice returned from illness, upon rehearing the case the majority expanded the definition of a direct tax even further, to include taxes on income from tangible personal property. With such a large portion of the law disabled, the majority decided to toss it out entirely.

But the Supreme Court did not say that the remaining provisions of the law, had they passed independently, would have been unconstitutional. To the contrary, the Court made clear that Congress could impose a tax on income from wages, salaries, and other compensation for personal services, as well as on income from intangible property such as stocks, bonds, patents, and copyrights. The Court ruled the law unconstitutional because it taxed income from tangible property without apportionment.

So even without the 16th Amendment, *Pollack* would allow Congress to impose a tax on a broad range of income. The Supreme Court clarified the point in a series of cases, including *Brushaber v. Union Pacific Railroad* (1915), *Stanton v. Baltic Mining Company* (1916), and *Eisner v. Macomber* (1920). In these cases, the Court ruled that the 16th Amendment granted Congress no new power to tax; the 16th Amendment simply reclassified an income tax on tangible property as an indirect tax. Demonstrating that the 16th Amendment granted no new power, the Court held that Congress still couldn't tax interest earned on state and local bonds—much to the chagrin of not only Progressives but also of Secretary of the Treasury Andrew Mellon and other tax cutters, who believed that the tax-exempt status of state and local bonds was redirecting capital from efficient allocation in the private marketplace into bloated state and local government bureaucracies.

Eliminating Congress' power to tax income, as many supporters of a national sales tax propose, would require more than merely repealing the 16th Amendment. We would have to ratify an amendment prohibiting Congress from imposing any income tax as well as estate, gift, and gross receipts taxes.

Three years after *Pollack*, Congress passed the War Revenue Act to fund the Spanish-American War. The act imposed a tax of 0.25 percent on the gross receipts over $200,000 of companies in the sugar and oil refining businesses and a progressive estate tax ranging from 0.75 percent to 15 percent. (An estate tax is imposed on the estate, while an inheritance tax is imposed on the recipients of the estate.) In *Spreckles Sugar Refining Company v. McClain* (1902), the Supreme Court upheld the gross receipts tax as an excise tax. Two years earlier, in *Knowlton v. Moore*, the Court had decided that *Pollack* hadn't overturned *Scholey*, so that an inheritance or estate tax still constituted an indirect excise rather than a direct tax.

Fourteen years after *Pollack*, Congress imposed a 1 percent flat tax on corporate net income in excess of $5,000 ($95,000 in 1998 dollars). By taxing corporations on dividends from other corporations, the 1909 act began the practice of double taxing corporate income. Opponents challenged the 1909 act in court, too. In 1911—two years before the adoption of the 16th Amendment—the Supreme Court ruled in *Flint v. Stone Tracy Company* that the tax on corporations was constitutional as "an excise upon the particular privilege of doing business in a corporate capacity." In other words, according to the Court's reasoning in 1911, just because the corporation tax was a tax on income didn't mean it was an income tax.

So even before the 16th Amendment, the *Pollack*, *Spreckles*, and *Flint* decisions gave a clear signal to Congress that it could impose a tax on wages, salaries, professional service fees, interest, dividends, royalties from intellectual property, estates, gifts, gross receipts, and any income earned by corporations. Congress could even double tax corporate income.

Eliminating Congress' power to tax income, as many supporters of a national sales tax propose, would require more than merely repealing the 16th Amendment. We would have to ratify an amendment prohibiting Congress from imposing any income tax as well as estate, gift, and gross receipts taxes. Otherwise, Congress could rely on the earlier Supreme Court decisions to continue collecting these and other related taxes. And as the residents of Canada and Western Europe could tell us, we'd probably end up with the worst of both tax worlds: paying both a national sales tax and an income tax.

David B. Levenstam (AdmrlLocke@aol.com) was the Louis Pelzer Fellow in American History at the University of Iowa and a Salvatori Fellow at the Heritage Foundation. A tax practitioner since 1982, he is working on his Ph.D. dissertation, titled The Triumph of Competition: The American Political Economy, 1887–1933.

Gender War Crimes

Classifying offenses against women as "hate crimes" is a dangerous political game.

By Cathy Young

The fatal beating of 21-year-old University of Wyoming student Matthew Shepard, apparently motivated at least in part by his homosexuality, has renewed the debate over hate crime legislation. The murder prompted calls from gay activists, editorial pages, and public officials, including Attorney General Janet Reno and President Clinton, for passage of the Federal Hate Crimes Protection Act. This bill would allow federal prosecution of crimes motivated by hatred based on gender, sexual orientation, and disability.

In their recent book *Hate Crimes: Criminal Law and Identity Politics*, criminologists James Jacobs and Kimberly Potter argue that ordinary criminal law provides adequate protection for victims of hate crimes—a point underscored by the Shepard case, in which prosecutors plan to seek the death penalty for the accused killers. Jacobs and Potter also warn that focusing on the identity aspects of crimes with often ambiguous motives can exacerbate tensions between groups, and they note that hate crime laws raise First Amendment concerns because they tend to punish perpetrators for their beliefs. But apart from the general problems posed by laws that single out "hate" or "bias" crimes, the bill before Congress contains an especially insidious provision: the addition of gender to the existing categories of race, religion, and ethnicity.

Except for one or two sensational cases, such as the 1989 massacre of 14 female engineering students at the University of Montreal by Marc Lepine, one would be hard pressed to think of a gender-based hate crime comparable to the murder of Shepard or of James Byrd, the black man dragged to his death behind a pickup truck in Texas last summer. Even anti-gay violence is directed at men more than 80 percent of the time.

But many feminists argue that we simply fail to recognize the gender bias in crimes against women such as rape ("both a symbol and an act of women's subordinate social status to men," according to University of Michigan law professor Catharine MacKinnon) and domestic abuse. These theories—distilled to sheer lunacy in the work of Andrea Dworkin, who believes that women live under "a police state where every man is deputized" and that heterosexual sex is a violation by definition—may be intellectually stimulating to some, but they are far too speculative to serve as a basis for legislation.

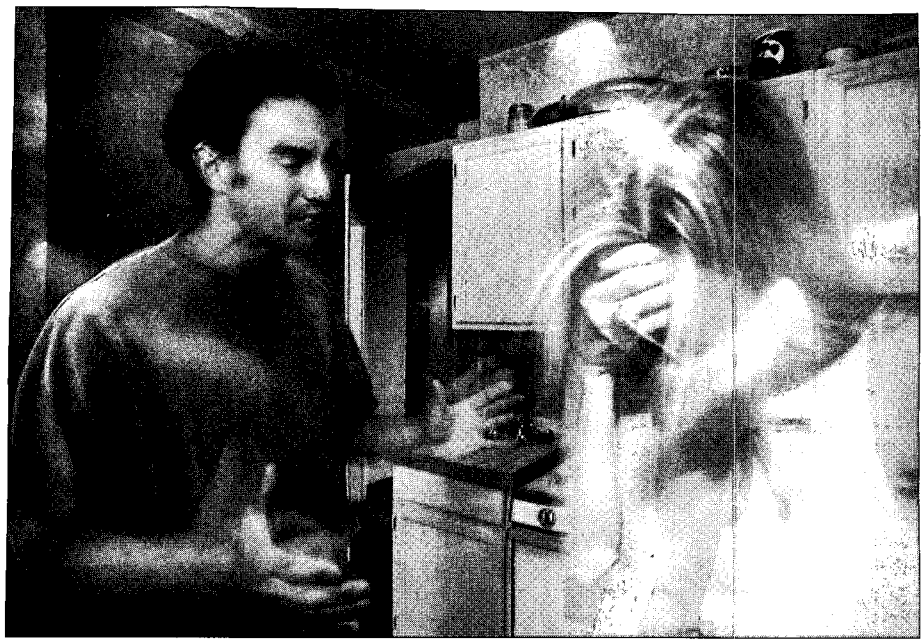
However gratifying the outcome of some cases might be, the process is troubling. The Federal Hate Crimes Protection Act would open the door to federal criminal prosecutions for sexual assault or domestic violence, particularly in high-profile cases that end in acquittal in state courts.

Forensic psychology does not support the view that rapists are driven primarily by hatred toward women rather than, say, sexual compulsion or anger at the whole world. The feminist interpretation of rape as intrinsically gender-motivated cannot explain sexual assaults on boys, or the fact that "date rape" is no less common among gay men than among heterosexuals. The statement that "women are raped because they are women" may ring true, but in a biological rather than a political sense: When a man's sexual urges are directed toward women, chances are that his sexual aggression will be too.

As for domestic violence, University of British Columbia psychologist Donald Dutton and other researchers have found that wife beating is far more strongly associated with "borderline personality disorder" (characterized by a proclivity for intense relationships, insecurity, and rage) than with patriarchal attitudes; drugs and alcohol are major factors as well. Aside from the much-debated issue of female aggression toward male partners, it is no longer in dispute that physical abuse is at least as common in gay and lesbian couples as in heterosexual ones.

One might point out, too, that male violence is directed mainly at other males. If sexual assault and intimate violence against women are related to gender, surely so are male-on-male attacks triggered by real or perceived slights, sexual rivalry, and thrill seeking. Thugs who rape a woman may also beat up men just for fun, like the teenagers convicted in the notorious 1989 rape of the Central Park jogger. Describing their "wilding" rampage in the park to a detective, one of the teens said that "wilding" meant "going around, punching, hitting on *people*"—not just women. Yet the attack on the jogger became a paradigm of gender-motivated violence to many feminists; it was cited as such by Helen Neuborne, then president of the National Organization for Women Legal Defense Fund, in testimony to the Senate Judiciary Committee.

Despite these logical flaws, the radical feminist theory of "gender violence" has made significant inroads in the legal system. It was incorporated into the Violence Against Women Act (VAWA), passed by Congress in 1994, which allows federal civil rights suits for violent crimes "motivated by gender." The application of VAWA, however, is limited by the fact that



Domestic Problem: Should gender be included in proposed federal hate crime legislation? Criminologists James Jacobs and Kimberly Potter argue against such laws in general, pointing out that existing statutes provide adequate protection, that focusing on identity aspects of crime can exacerbate tensions between groups, and that hate crime laws raise serious First Amendment questions.

it provides only for monetary damages. Such litigation, usually lengthy, doesn't make sense unless there are significant assets to go after. Some VAWA cases involve divorcing wives alleging abuse by wealthy husbands; recently, a VAWA lawsuit was filed against basketball bad boy Dennis Rodman by a Las Vegas Hilton casino employee who accuses him of grabbing her by the sides of the torso and lifting her (which, she claims, caused her underwire bra to be painfully pushed into her breast). Other legal action has targeted deep-pocket entities: A suit filed in December 1995 by Christine Brzonkala, a former Virginia Polytechnic student who claimed that she was raped by two male students, named not only the alleged perpetrators but the college as defendants.

The Federal Hate Crimes Protection Act, by contrast, would open the door to federal criminal prosecutions for sexual assault or domestic violence, particularly in high-profile cases where an acquittal or dismissal in state courts results in an outcry from women's groups. Men accused of these crimes would effectively lose their double jeopardy protections, like the Los Angeles policemen who were convicted of beating Rodney King. (Under the doctrine of "dual sovereignty," a federal offense is not the same as a state offense, even if it consists of the same action.) However gratifying the outcome of some cases might be, the process is troubling. Moreover, in a "bias" case, the defendant could find himself on trial for having sexist views, watching X-rated movies, or mistreating other women, even if they never went to the police.

Testifying in favor of the expanded federal law last June, Assistant Attorney General Eric Holder reassured the Senate Judiciary Committee that very few "gender-motivated hate crimes" could be prosecuted in federal court, since such prosecutions would require proof of "gender-based bias." But judging from the history of VAWA litigation, which he invoked as a model, the criteria would be elastic enough to apply to any claim of rape or abuse. And that is clearly what the advocates want. At a symposium on VAWA last May, NOW Legal Defense Fund attorney Julie Goldscheid praised the courts for recognizing, "in language that is really heartening to a women's rights advocate, that domestic violence and sexual assault are gender-motivated crimes rooted in the history of discrimination against women."

In Christine Brzonkala's suit against Virginia Polytechnic, the courts found evidence of bias in the fact that the two alleged rapists were virtual strangers to the plaintiff (which should rattle feminist activists who have denounced the notion that acquaintance rape is a lesser crime); that the attack had no motive other than rape; and that, according to Brzonkala, one of the defendants told her, "You'd better not have any fucking diseases." It is worth noting that after hearing the evidence, a Virginia grand jury refused to indict the two men, who claimed that they had consensual sex with Brzonkala—which did not keep her from being invited to the White House Conference on Hate Crimes as a spokeswoman for hate crime victims.

In other cases, federal courts have ruled that alleged acts of sexual violence by themselves justify a claim of gender motivation. In *Jane Doe v. the Rev. Gerald Hartz*, a 1997 case in which an Iowa woman accused her parish priest of kissing and groping her, the court specifically stated that unwanted sexual advances met the gender motivation requirement even if they were "intended to satisfy the actor's sexual desires," since they could also "be demeaning and belittling, and may reasonably be inferred to be intended to have that purpose or to relegate another to an inferior status." In other words, if a priest makes unwanted sexual advances toward a young man, his goal is merely to satisfy his lust, but if he makes unwanted sexual advances toward a young *woman*, his goal is to relegate her to inferior status. The suit was later thrown out on the grounds that the alleged conduct didn't rise to the level of a violent crime as required by VAWA, but the lower court's interpretation of gender bias went unchallenged.

Two federal courts have given a green light to civil rights suits under VAWA based on allegations of spousal abuse. One case is pending, while the other was settled during the appeals process. Meanwhile, courts in some of the 17 states with hate crime laws that cover gender have applied those statutes in cases of spousal assault. In 1993, a New Hampshire judge used that state's hate crime law in sentencing a man convicted of misdemeanor assault on his girlfriend, after four other women testified that he had abused them while they dated and harassed them after their breakups. There were no allegations that the defen-

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dant had ever assaulted any women with whom he was not intimately involved. Such an approach contrasts sharply with the usual analysis of "hate crimes" based on race or ethnicity, where the fact that the victim is selected at random, on the basis of group membership rather than a personal relationship, is considered indicative of bias.

Many advocates of hate crime laws are less concerned with protecting victims or even punishing offenders than with making a political point about the pervasiveness of bigotry in American life.

In the case of gender, not only the special treatment of hate crimes but the use of the hate-crime label itself is part of an ideological agenda. The goal is not only to affirm that violence against women is a matter of special concern but that it's part of a male war against women.

Still, most acts classified as hate crimes probably are based at least partly on actual bigotry. In the case of gender, not only the special treatment of hate crimes but the use of the hate-crime label itself—and the analogy with crimes motivated by racial, ethnic, or anti-gay bias—is part of an ideological agenda. The goal is not only to affirm that violence against women is a matter of special concern but that it's part of a male war against women. If no one challenges such ideas in the political arena, it's likely that legislators and judges will continue to give them a seal of approval. ◆

Contributing Editor Cathy Young (cathyyoung1@compuserve.com) is vice president of the Women's Freedom Network and author of Ceasefire: Why Women and Men Must Join Forces to Achieve True Equality, *to be published by The Free Press in February.*

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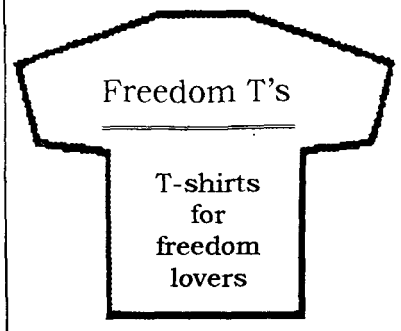

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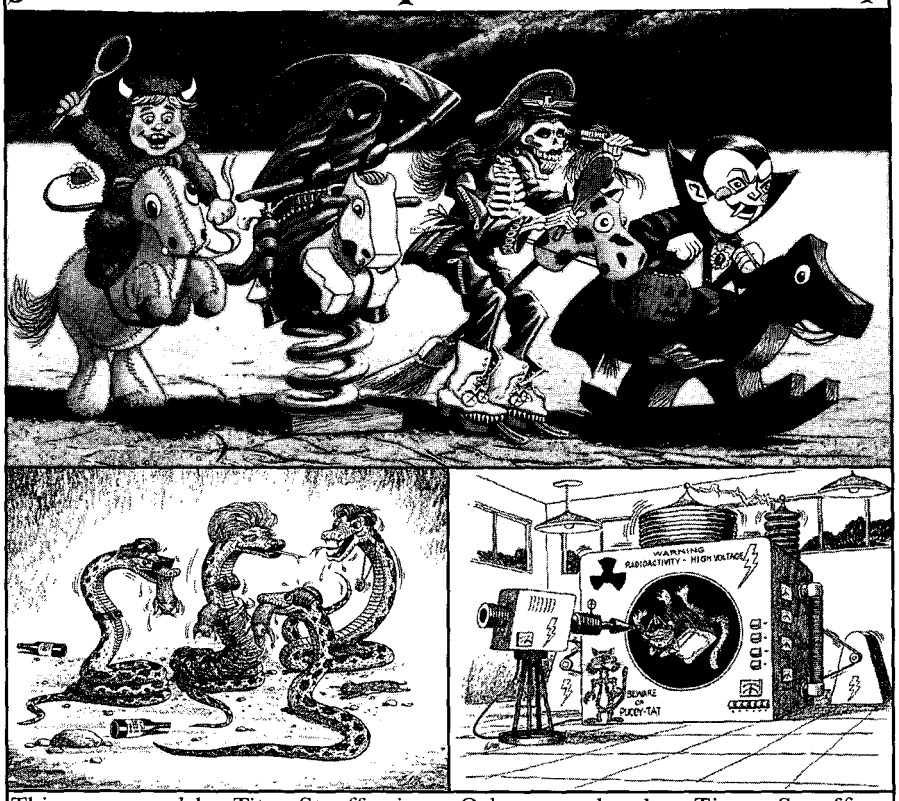

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Dark Bedfellows

Postmoderns and traditionalists unite against the Enlightenment.

By Walter Olson

If you think you've sorted out your scorecard in the culture wars, try guessing who wrote this obituary for the Enlightenment, circa 1992: "The claims of universal reason are [now] universally suspect. Hopes for a system of values that would transcend the particularism of class, nationality, religion and race no longer carry much conviction. The Enlightenment's reason and morality are increasingly seen as a cover for power, and the prospect that the world can be governed by reason seems more remote than at any time since the eighteenth century."

On the face of it, this is a fairly standard exercise in academic postmodernism. There's the reason-is-dead theme; the announcement of the failure of the "Enlightenment project"; the typical deconstructionist swipe at the use of reason as a "cover for power"; and the multiculturalist view of all value systems as contingent on such matters as class and race. Throw in "phallologocentric hegemony," and the parody would be complete.

And yet this quote appeared not in a pomo academic journal like *Social Text* (of Sokal hoax fame) but in the orthodox Catholic *New Oxford Review*. Its author was the late Christopher Lasch, a social theorist (*The Culture of Narcissism*, *The Revolt of the Elites*) who has a large following among many of the very sorts of people—center-left communitarians, Strauss-influenced conservatives—who consider themselves immune to trendy downtown ideology.

If, unlike Lasch, you think reason hasn't been discredited; that some institutions (such as free speech and private property) can be prescribed universally; and that moral reasoning, while at times a cover for the illegitimate workings of power, is in the end the best hope for overturning them, then you may be feeling a mite lonely. Hardly anyone is defending the Enlightenment these days, while across the political spectrum it seems most heavy-duty thinkers can't stand it.

The arrows land from every direction. Environmentalists, notes *The Economist*, chide the Enlightenment for launching a "western Promethean conception of human relations with the earth." "Racism and enlightenment are the same thing," adds one of the critical race theorists quoted by Daniel Farber and Suzanna Sherry in *Beyond All Reason: The Radical Assault on Truth in American Law* (1997), while Colorado law professor Richard Delgado suggests: "If you are black or Mexican, you should flee Enlightenment-based democracies like mad, assuming you have any choice" (never mind that, as it happens, the actual migration seems to run in the opposite direction). On the right, Roger Scruton in *City Journal* finds and expresses unease about a "growing tendency" among American conservatives to turn against the Enlightenment as well.

So what is it, exactly, that's so upsetting to these people about the period when the lights came on in Western culture?

The Enlightenment, writes Edward O. Wilson in *Consilience*, is "the West's greatest contribution to civilization. It launched the modern era." In a fierce, hot blast of invention, intellect, and enterprise—the period can conveniently be dated to the century between 1687, when Isaac Newton published his *Principia*, and 1787, when the U.S. Constitution was devised—Europe and America forged not only the modern scientific method but also modernist thinking about metaphysics and morality, government, and society.

A few simple but sweeping propositions emerged. The universe is governed by fixed, objective, and impersonal laws, in principle discoverable by the exercise of human reason, experience, and observation. Traditions, customs, and claims of revelation cannot expect to be permanently insulated from such rational scrutiny, and, while no part of humanity's complex inheritance should lightly be discarded, beliefs and practices that prove squarely inconsistent with reason and experience ought eventually to yield ground.

By challenging the intellectual authority of the church, the Enlightenment made its first set of durable enemies; it soon went on to anger the throne as well, by systematizing the idea of individual rights and adding what historian Isaac Kramnick calls the "explosive" proposition that the individual had a morally legitimate right to pursue happiness. "Enlightenment liberalism set the individual free politically, intellectually, and economically," writes Kramnick in his introduction to the Viking *Portable Enlightenment Reader*.

Derided by some for their abundant confidence in Progress writ large, Enlightenment thinkers also believed in progress writ small, in the form of personal self-cultivation. The emergent Enlightenment man might be at once a man of affairs, a scientist, and an agitator: Condorcet was a mathematician, Locke a physician, Jefferson an agronomist and architect. Self-cultivation would enable an obscure provincial to shed his hometown prejudices and become a sophisticate, a "citizen of the world" accepting the best productions and ideas of all lands.

No citizen was more worldly than businessman-diplomat-inventor Ben Franklin, who "seized fire from the heavens and the scepter from the tyrant's hand," and who, after rendering due service to his Philadelphia neighbors, went on to be fussed over in Paris salons. Assailed during his life as a libertine and infidel, Franklin was one of history's most persuasive moralists, *Poor Richard's Almanac* having inculcated more sound conduct than all the works of the Puritan Fathers.

While on the subject, there's no doubt which *country* best embodied Enlightenment ideals: the United States. "An asylum against fanaticism and tyranny" (Diderot), America achieved with its Constitution the highest proof of the practical uses of specu-

lative philosophy. Known as the land of the "self-made man"—a concept Kramnick sees as closely related to that of the Enlightenment man—America was also the land of individual rights and, before long, of science. Even the great exception in the American scheme of freedom, the tenacious existence of slavery in the South, was destined to be eroded at last by the free exercise of moral reasoning.

To be sure, Enlightenment thinking generated its own fads, blind spots, and excesses, especially in undervaluing long-evolved traditions and overrating the prospects for redesigning basic institutions from scratch; these richly deserved their later correction by such figures as Burke and Hayek. And it got widely blamed for the French Revolution's horrors—although, since the *philosophes* themselves got purged fairly early in the game, the exercise might seem a bit like blaming Kerensky for Leninism. Still, the criticism stuck and the lessons were fairly learned: Edinburgh and not just Paris came to set the tone, and few people any more wish to rename the months.

But it's one thing to trim the hedge and another to hack at its roots. Today's diverse opponents of the Enlightenment seem to be attempting just that, in ways that often converge curiously with each other:

■ *Cut science down to size.* A key tenet of the postmodern study of science, according to Noretta Koertge's introduction to the new essay collection *A House Built on Sand*, is that the field needs to have its claims to objectivity deflated: "Science must be 'humbled.'" Echo on the right: Paul Johnson, whose London *Spectator* column has a distinctly crankier streak than the doorstop histories he ships across the Atlantic, now rails against "scientific triumphalists" and names, as the chief menace to be fought in the new century, "Darwinian fundamentalists."

■ *Deride the "self-made man."* Lasch and other antimodernist critics decry, as the defining act of the deracinated modern, the flight into "choice" and away from a dense matrix of local associations. So they tend to belittle—as "self-inventing," "narcissistic," or worse—anyone who, in Virginia Postrel's phrase, turns his back on the old neighborhood with a mind to seek new challenges and associates in a place of

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his own choosing. Likewise, where identity politics holds sway, the young person who defects from a particularist subculture into the wider generic American culture can expect similar abuse, even if the epithets differ ("sellout," "assimilationist," "Oreo").

■ *Stop the globalization of culture.* The borrowing of Western culture by poor countries would have thrilled the *philosophes*; it appalls equally Lasch and the conservative philosopher John Gray, who see it as an assault by generic modernism on traditional and authentic forms of community. The 60s-era campus left was more straightforward about what it was fighting: "Western imperialism."

■ *Trash the concept of tolerance.* Thirty years ago it was Herbert Marcuse who unmasked the idea of "tolerance" as a tool of repression by the elite. Now social conservatives, from Harvey Mansfield to Robert Knight in *The Age of Consent*, have learned the deconstructionist dance steps. (Mansfield: "Toleration is not neutral....If we don't keep up the standard of morality we will bring it down.")

The gradual convergence of antirationalists on the right with their pomo Doppelgängers may have sped up a little in February 1994, when *First Things* published—I am not making this up—a piece with warmly appreciative things to say about Michel Foucault. Rising traditionalist thinker J. Bottum, who's now books editor of *The Weekly Standard*, praised the Frenchman's insights and noted a "curious parallel" between the work of left-wing icons Foucault, Jacques Derrida, and Frederic Jameson and that of such medieval thinkers as Eckhart, Cusa, and St. Bonaventure: "What believers have in common with postmoderns is a distrust of modern claims to knowledge." He proposed exploring common ground toward the joint goal of overthrowing the modern temperament, with its "scientific" and "technological" bent. He admitted the two camps still "disagree on whether God exists," but figured that little problem can be worked out after the rationalists are driven from the field.

Letters published in *First Things* since then confirm that other readers have been thinking along similar lines. Thus Susan Mennel of the University of New Hampshire salutes the "postmodern denial of the possibility of objective, neutral knowledge" since it "means that the appeal to some kind of objective 'proof' is itself ruled out, and therefore religious arguments, which have never relied on such a standard, can be far more intellectually convincing to a contemporary audience than to earlier ones more assured of the validity of naturalistic explanation."

By now, some explicit and vocal defenses of the Enlightenment might seem in order—and in fact they are turning up here and there, as in Wilson's *Consilience*. Also among those pursuing the issue are some of the followers of Ayn Rand, the Enlightenment lineage of whose general position is plain enough. In October the Institute for Objectivist Studies, which has been moving lately to engage a wider intellectual audience and shed the sectarian tone often associated with Rand circles, held its annual conference in New York on the theme "The Real Culture Wars: The Enlightenment and Its Enemies." IOS Executive Director David Kelley suggests one productive step might be to stop describing the culture wars as mostly a left-right squabble when in fact at least three distinct cultures are contending with each other: the Enlightenment culture that still holds sway in much of American life, a postmodern/relativist culture with a stronghold in the universities, and a pre-Enlightenment culture that has given up its claims to authority and is staging something of a comeback.

Paul Johnson, whose London *Spectator* column has a distinctly crankier streak than the doorstop histories he ships across the Atlantic, now rails against "scientific triumphalists" and names, as the chief menace to be fought in the new century, "Darwinian fundamentalists."

Who is likely to rally to the Enlightenment banner? Among the obvious candidates are scientists and technologists, who know from their daily experience that the material facts of reality cannot be arbitrarily redefined at will. (In Wilson's wry version: "Scientists, held responsible for what they say, have not found postmodernism useful.") Businesspeople as well, says Kelley, instinctively share the Enlightenment outlook, what with their common-sense grasp of material reality, their optimistic assumption that problems exist to be solved, their knowledge that scientific facts count, and the high value they place on individual achievement as something that deserves direct reward.

Another likely science-based flashpoint, Kelley believes, is today's rapid spread of anti-evolutionist ideas. Confined until only recently to a few beachheads like Tom Bethell's *American Spectator* column and David Klinghoffer's back-of-the-book in *National Review*, critiques of Darwinism are now the rage across the conservative press, even in places like *Commentary* and *The Wall Street Journal*. More—much more—friction on this issue appears to lie ahead. According to the newsletter of the Seattle-based Discovery Institute, California's Ahmanson family, through its Fieldstead & Co. foundation, has donated $1.5 million to the institute's fledgling Center for the Renewal of Science and Culture for a research and publicity program to "unseat not just Darwinism but also Darwinism's cultural legacy." Observing that "the most severe challenge to theology over the last two hundred years has been naturalism," the center proposes to "cure western culture of this unfortunate Enlightenment hangover."

Ben Franklin once said he was almost sorry he was born so soon since it meant he would not have "the happiness of knowing what will be known 100 years hence." Two centuries later, amid the undreamt-of levels of health and comfort that science has brought the West, a generation of intellectuals amuses itself in efforts to gnaw away at the Enlightenment foundations of the enterprise. Were he hooked to an underground turbine, Ben Franklin might be discovering a new way to generate electricity: spinning in his grave. ◆

Contributing Editor Walter Olson (hambo @mags.net) is a senior fellow at the Manhattan Institute and the author of The Excuse Factory: How Employment Law Is Paralyzing the American Workplace *(The Free Press).*

The Libertarian Quartet

By Richard A. Epstein

The Structure of Liberty: Justice and the Rule of Law, by Randy E. Barnett, New York: Clarendon Press, 347 pages, $29.95

Randy Barnett's new book, *The Structure of Liberty*, weaves together the two main strands of its distinguished author's career. In the realm of the practical, Barnett has drawn on his extensive experience as a state's prosecutor in Cook County, Illinois. As a legal theorist, Barnett (now a law professor at Boston University) builds on the great writers of the liberal tradition—Hobbes, Locke, Hume, Hayek, and Nozick—for his own theoretical defense of the rights and duties that all individuals owe each other as a matter of natural law. He then uses his judgments on rights and duties to define the province of a properly limited government's activities. Barnett's instincts should be more widespread today, when lawyers, philosophers, and policy makers automatically posit a government solution for any perceived social failure. His interest in basic theory as it relates to the uses and abuses of political power makes his views on a wide range of state policy issues, from taxation to criminal law, worthy of careful attention.

In natural law tradition, the purpose of government is to address the downside of human nature, which in Barnett's view requires a proper response to the problems of knowledge, interest, and power. The problem of knowledge is the difficulty of understanding other people's subjective preferences and predicting the complex forms of behavior to which those preferences will lead. The problem of interest is the natural partiality that persons give to their own concerns relative to those of others. Finally, the problem of power concerns the dangers of excessive or inadequate enforcement of legal norms.

Answering these three challenges defines the three major parts of this book. The solution requires the rule of law: coherent, fixed, intelligible, predictable, prospective, public, and stable rules of conduct with which rational human beings can comply. Only a system that embraces the rule of law can allow individuals to plan and organize their lives in an intelligent fashion.

Once these concerns are identified, Barnett outlines the basic rules of proper conduct to facilitate the flourishing of human beings in a society where scarcity of resources requires the limitation of individual freedom. To his critics on the left, much of what he has to say will seem to come from another century, or perhaps from another planet. I shall not tarry over their objections. But I too have major disagreements with Barnett's theory, because I also think that he tries to get along with a state that is too small, one which cannot discharge the essential functions needed to advance human flourishing or social welfare. The challenge is to point out the weaknesses in Barnett's theory without throwing us into the deadly, all-consuming embrace of the welfare state.

Like all great terms, *libertarian* evokes powerful emotions because it contains deep-seated ambiguities. But the term should be understood in opposition not only to socialism and welfare state liberalism but also to social convervatism of all stripes.

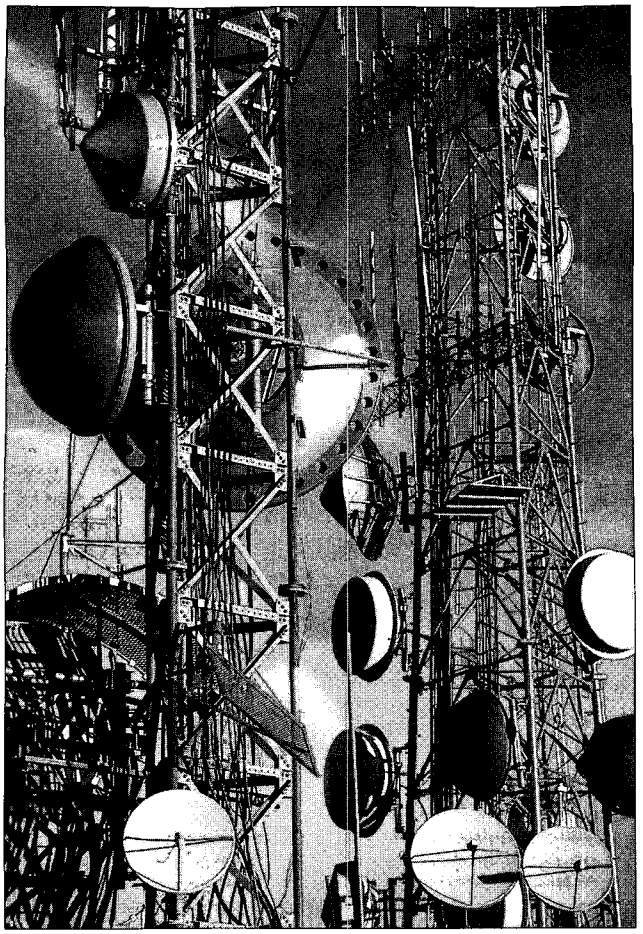
The dispute here goes to the heart of the question of what it means to be a libertarian. Like all great terms, *libertarian* evokes powerful emotions because it contains deep-seated ambiguities. It could refer to a philosophical system, or it could be identified with a political party whose views are imperfectly aligned with that system. But even if we put politics to one side, the term should be understood in opposition not only to socialism and welfare state liberalism but also to social conservatism of all stripes. Viewed in that context, Barnett and I are as one.

My disagreement with Barnett is not over the primacy of individual liberty as the end which government serves. Rather, it is over the seeming paradox of whether liberty must be limited so that it may be preserved. Barnett sees little place for any such limitations within a system of liberty, and by implication in a system of libertarian thought. My view is that, however indispensable liberty is for the advancement of human welfare, it must, like all great principles, be hedged in by other principles that flesh out a more complete legal system. I see a limited but irreducible function of government in responding to the problems of monopoly and public goods, while Barnett thinks these concerns require no concessions toward a larger state.

Barnett begins by explaining why his view of human nature makes him a natural lawyer. Unlike many of his ilk, he is quite relaxed about this characterization, using homey examples (for which he has a real gift) to illustrate his position. Natural law has gotten something of a bad name in instrumentalist and policy-oriented quarters. It is condemned for appealing to (take your pick) deductive, immanent, necessary, or self-evident truth (or worse, Truth) that retains its plausibility only at a high level of abstraction. Such a charge can be lodged against the abstruse writings of such political theorists as the late Leo Strauss and such modern jurists as Ernest Weinrib and Lloyd Weinreb. Barnett, commendably, has less lofty goals in mind.

For him, the phrase *natural law* helps remind us that salient features of human nature are not easily manipulable. He rightly cautions against the oft-heard claim that human nature is "socially constructed" (it is never quite said by whom) and therefore can be *re*constructed in ways that fit contemporary ideals of human (read, gender or racial) equality.

Yet Barnett does not press the point on his skeptical readers as hard as he might, for his main goal is to persuade us that natural law should be understood in a conditional "if-then" sense. Thus, if you want to achieve human flourishing, then these are the rules of conduct that you have to obey. His asserted parallel is to engineering principles, which say that if you want your building to stand, then you had better put your center of gravity over your base; if you want your building to fall down, then by all means have a lopsided overhang. The parallel is instructive, but not in the sense that Barnett intends. There are no laws of engineering; there are only laws of physics that indicate the relationships between distance, mass, time, force, and so on. Those laws cannot be couched as "if-then" instructions; they are the constraints that must be respected for any human project, whether noble or nefarious, to go forward.



Missed Call: By failing to accept legitimate instances of government coercion, Randy E. Barnett misses the chance to critique regulations—such as the universal service obligation that is part of the 1996 Telecommunications Act—that have more to do with subsidy than with efficient deployment of resources.

The moment, therefore, that we couch human laws in these terms, we are not working parallel to natural (i.e., scientific) laws. Rather, we are asking how we can maximize certain outputs, such as human flourishing, given the constraints that we face. Many of these constraints are imposed by physical laws; others are biological imperatives that have to do with caloric intake, heat retention, and reproduction. But no matter what their source, Barnett's version of natural law, like that of the most successful of the classical liberal writers, becomes in practice nothing more or less than a sensible, constrained form of utilitarianism which measures the success of rules of conduct by the way in which they allow individuals to order their own lives, and groups to order their collective existence.

In this framework, the distinction between the language of human flourishing and that of social welfare becomes important. The former talks about the individual in relative isolation and treats self-realization as the highest goal. But that approach tends to miss the question of conflicts between individuals, which are more squarely addressed under theories of social welfare. These theories compare social states—claiming, for example, that social state A should be preferred to social state B if one person is better off in state A than in state B, and everyone else is at least as well off. Such calculations are not easy. But Barnett does not explain why the individualistic account provides us with better traction for social problems than the more comprehensive accounts, such as the test of Pareto superiority just mentioned, which is commonly used in economic theory.

By stressing the personal account of human flourishing, Barnett fails to discuss with sufficient fullness the key question of which rules of conduct should be individually chosen and which should be legally imposed—that is, backed with the coercive power of the state. Eating three square meals a day, avoiding smoking, and getting enough sleep sound like fine rules of conduct, but only a dangerously authoritarian state (such as ours is now becoming, on the first two points at least) would make adherence to such dietary, tobacco, and sleeping laws subject to collective control.

What, then, should the objects of public force be? Here Barnett draws on the work of the philosopher Hillel Steiner to insist that state power should be directed toward the articulation and formation of "compossible rights." These are the rights which it is possible for individuals whose personal interests sometimes diverge to assert for themselves and to recognize in others in ways that maximize their respective spheres of freedom. At this point in the book, the discussion of natural law recedes into the background, for Barnett is rightly concerned with getting people to buy into his substantive regime, even if they reject his legal metaphysics. He adheres (as do I) to the classical liberal tradition that starts with four simple rules as the keys to organizing social behavior.

The first of these is *the principle of individual liberty*, which gives to each individual a sphere of control over those matters closest to him. Liberty allows individuals to pick courses of action that advance their own flourishing. Since individuals live not in a void but as physical entities bound in time and space, *the rule of first possession* allows each person to choose and defend some part of the earth's surface on which he can carry out his own plans.

As social beings, humans understand the mutual benefit that comes from coop-

eration and exchange; therefore they must have a *law of contract* that permits them to deploy and redeploy their labor and property in ways that work to their own advantage. The freedom to contract, moreover, covers the right to determine with whom one will contract; rightly understood, therefore, it embraces a freedom *from* contract as well. And to make sure that liberty, property, and contractual interests are respected, a *law of tort* (or crime) has to be invoked to punish those who seek to gain advantage by deviating from the accepted rules—that is, who violate the fundamental liberal prohibition against force and fraud.

The case for this libertarian quartet is so powerful that it would be foolish for anyone to mount a frontal assault on it. But that is just the point. The opponents of freedom of contract never take so silly a position as to urge the prohibition of all contracts. Rather, they make selective claims of market failure that are said to justify various forms of state intervention. Barnett's defense of this libertarian quartet is underdeveloped because he does not explicitly address and reject the focused attacks on freedom of (and freedom from) contract that form today's conventional wisdom.

On the top of that list stand anti-discrimination laws, which forbid the use of race, sex, age, disability, and sexual orientation (for starters) as reasons for refusing or failing to do business with someone. I have already climbed to the top of the rafters to denounce these interventions in competitive labor markets as mischievous. We would have more vibrant labor markets by scrapping the entire government apparatus in favor of the 19th-century common law regime that allows people to refuse to deal for good reason, bad reason, or no reason at all. Barnett has to agree with this conclusion, so it would be nice to see him call outright for the repeal of Title VII of the 1964 Civil Rights Act and similar legislation.

That position is not necessarily conservative, since (as I argue in *Forbidden Grounds*) repealing anti-discrimination laws would undermine the color-blind norm in private competitive industries—a norm that is supported by such prominent conservative thinkers as Abigail and Stephan Thernstrom—and pave the way for private affirmative action programs, however foolish they may seem or be. The decentralization of the affirmative action problem would allow individual firms to take advantage of local knowledge. Research universities, for example, might have different thresholds for affirmative action than regional colleges. Or affirmative action might be introduced at lower cost in the social sciences than in the physical sciences. Allowing different levels of affirmative action for different institutions would help defuse the chronic political tension from pointless presidential commissions that search for a misguided social solidarity on matters best left to the multiple judgments of separate firms.

But on this question Barnett gives us only silence. Ditto for wrongful dismissal suits (detailed in such gruesome particularity by Walter Olson's *The Excuse Factory*), collective bargaining laws, minimum wage laws, equal pay, family leave, and mandatory pension laws—all mistakes in his view and mine. Opponents of contractual freedom trot out arguments of exploitation and market failure to justify their schemes. To make good Barnett's claim that freedom of and from contract represents sound social policy requires a close, patient analysis of the proposed reforms and the institutional dislocations they cause. Barnett's Olympian detachment sounds ecumenical, but it does not take the fight to where his political opposition lives. His elegant theoretical defense can be airily dismissed by people who assert that this finespun theoretical structure could not survive the pounding it would receive in the real world.

Barnett's adversaries are not solely on the left. One commonly cited source of market failure is the inability of firms to take into account safety risks when they set working conditions for their employees. Enter the Occupational Safety and Health Administration, with its bureaucratic imperatives, nosy inspectors, and mind-numbing regulations. Philip Howard achieved massive and deserved publicity with his book *The Death of Common Sense* by pointing out the absurdities this system has wrought. One unintended but powerful consequence has been to disrupt local safety regimes with external standards imposed by people who mistakenly think that capital improvements are more effective than worker cooperation in achieving safety objectives.

Yet Howard's book fizzles in the end, because he is unable to rid himself of the thought that OSHA has a useful role to play in workplace safety. He therefore veers away from the evils of inflexibility by embracing a common-sense discretion that allows officials to waive OSHA's rules based on local conditions. But in so doing Howard substitutes one set of vices for another. Which firms get the waivers, and why? Discretion is often exercised in arbitrary and capricious ways that cannot be ferreted out by the crude devices available to the legal system. One connected firm gets a waiver, and it then lobbies fiercely to keep its key competitors from getting the same relief. Barnett could have advanced his case mightily by pointing out that a system based on freedom of contract avoids these multiple embarrassments by reducing *tout court* the opportunities for political intrigue. And he could have referred to economist W. Kip Viscusi's solid empirical studies, which show that firms face the lash of a hefty wage premium (even with OSHA in place) if they do not tend to worker safety.

My first criticism of Barnett, then, is that he does not tackle head on his chief adversaries in those arenas where the quartet of libertarian principles is able to ward them off. My second criticism cuts in the opposite direction. Barnett does not satisfactorily defend the quartet as the outer limit of state intervention—though, to his credit, he is well aware of the challenges that are raised in both moral and economic theory to this four-part approach.

The first challenge involves the so-called cases of necessity, wherein a person in imminent peril wishes to override the absolute right of an owner of private property to exclude other individuals. The basic virtues of a rule of exclusion for land and chattels is well understood. Without exclusion, cultivation, development, and conservation of natural resources are curtailed, because B can always reap or destroy the crops that A has planted. The necessity exception, endorsed by virtually every legal system that proceeds by the common law method Barnett defends, does not allow B

to enter A's land willy nilly. But it sometimes does permit entrance if B must take refuge from an ocean storm, subject to his obligation to compensate A for any loss thereby inflicted. It might not let B enter A's cabin if A is present, but it would allow him to break into A's unoccupied cabin in order to forestall death from starvation or cold, just as it would allow B to enter A's land to save the life of C.

As these examples show, the exact scope of the privilege is hard to define because so much depends on the messy balance between B's need and the strength of A's property interest. But we have to fight through the examples to reach rough cloture. To say that B may be "morally" entitled to take A's resources while denying that B could be "legally" entitled is not very helpful. To say that a slippery slope could lead to the unacceptable expansion of the privilege (which has not been the case) is to ignore the dangers of a rigid rule that allows no privilege at all. Some limitation on liberty and property is recognized in practice. Barnett is mistaken to conclude that the principle of absolute exclusion is deductively necessary. A more nuanced concern with the demands for social utility under extreme conditions would lead to a better result.

The necessity cases represent only the thin edge of the wedge. The greater challenge to the libertarian quartet arises when the stubbornness of a single individual can prevent the implementation of a collective goal that advances the subjective interests of all parties, especially maximizing the output of common-pool resources. A group of landowners sits atop a valuable pool of oil and gas. Many people own property along a river or stream. Many fishermen or hunters have access to wild fish or birds. In each case, the rule of first possession is inadequate to stop the premature consumption of valuable resources. From the earliest times, legal systems have responded to these risks by adopting systems of common property that operate side by side with systems of separate property. Often these common systems are customary in origin, as with the rules that govern rivers and beaches. Sometimes they are developed by painful experience, as with statutory restrictions on groundwater use, fishing, and oil and gas exploration.

In each of these cases, the pattern runs roughly as follows. When resource utilization is low, people see great merit in a rule of capture, which is cheap to enforce and gives clear title to the first possessor. But when utilization rates increase, the first possession rule leads to premature and wasteful efforts to gobble up resources before others do. The capture rule for groundwater yields to some mushy regime of correlative rights and duties. The fishery is subject to catch limits. Oil and gas exploration is governed by spacing and unitization rules that prevent overexploitation. In each of these cases there are smart ways and dumb ways to proceed after the first possession rule is abandoned. But the strengths and weaknesses of the various approaches have to be examined directly. It simply will not do to assume that the capture rule, with its enormous defects, always comes out on top simply because the alternatives are subject to error.

The knowledge required for sensible regulation is available. Bad schemes can be denounced; good ones improved. Regulatory nihilism will not cut it as we center the 21st century. Regulation beyond the libertarian norms is a necessity. The only question is whether we shall do the task wisely or poorly.

The same difficulty with the libertarian quartet arises with the provision of classic public goods: common carriers, street lights, lighthouses, and the like. Barnett is very skeptical of taxation and regulation because they run smack into the problems of knowledge, interest, and power with which he is rightly concerned. But as with natural resources, it is wrong to assume that the imperfections of the libertarian quartet are smaller than those of some collective solution.

The requirement that common carriers serve all comers (explicitly overriding freedom from contract) is of very old origin, and it represents one possible response to the question of monopoly power. Even today, the strongest defenders of competition in the telecommunications market recognize that some form of regulation is necessary to secure interconnection (with appropriate access fees) between the local exchange carrier that controls the last mile of wire and the long-distance carriers that compete with each other. Volumes could be written about mistakes in the design and implementation of the 1996 Telecommunications Act. But the one objection that does not hold water is the idea that businesses with a legal or de facto monopoly should have the absolute power to exclude.

Barnett does not deal with these examples directly. Rather, he notes, correctly, that the mere presence of a coordination problem does not justify the use of government intervention to whip recalcitrant participants into line. But that skepticism can be incorporated into a more sensible view that weighs the gain from overcoming the monopoly problem against the administrative costs of putting some particular solution into place.

Barnett engages in a calculation of that sort when he relies on economist Ronald Coase's famous 1974 article, "The Lighthouse in Economics," which attacked the orthodox view denying the ability of private firms to provide lighthouses. The beacon so provided has been called a public good that no one will pay for if others will provide it anyway. Since all self-interested parties can take the position of free-riders, the lighthouse will never get built. But it turns out that it does get built, and the fees for it are collected not as ships sail by on the open sea but when they dock at nearby ports.

That is undeniably a clever solution, but it is *not* one that operates solely within the confines of the libertarian quartet. The only way the fee can be charged is through the exercise of state monopoly power at the port. Indeed, in many cases the task of collection was left to customs officials. No competitive firm could collect that charge from its customers if they were free to go

elsewhere. And the port fee system is easily subject to monopoly abuse if the revenues exceed the cost of providing the lighthouse and are diverted to other ends. The private owners of the lighthouse have a monopoly position and, unless some common carrier obligation is imposed, can charge what the traffic will bear. Indeed, the British parliamentary reports from the 1830s that recommended the shift to public ownership of lighthouses noted that the revenues far exceeded operation costs.

For *Coase, this* problem did not matter, since his main mission was to show that economics textbooks which treated lighthouses as the classic government-provided public good erred because they did not study the actual practices of lighthouses. But for Barnett, these observations are much more damaging, for they show the intractable second-best nature of every public good problem. The only way to avoid the evident dangers and inefficiencies of government funding is to take the risk of private monopolistic behavior. No a priori answer tells us which loss is greater.

More generally, holdout and monopoly problems are very tough, and sometimes they require all sorts of government coercion. To analyze when and how that coercion can be used requires a far more detailed examination of the intricate takings and just compensation problem than Barnett offers in this book. By failing to undertake this task, Barnett misses the opportunity to weigh in against those forms of redistributive regulation —whether through assigned risk pools in insurance or the grotesque universal service obligation that is part of the 1996 Telecommunications Act—that have much more to do with subsidy than with efficient deployment of resources in a network industry. The dangers of misguided regulation are hard to attack credibly simply by declaring every deviation from the libertarian quartet unacceptable. What is needed now is not a blanket rejection but a differential analysis whereby some systems fail and other succeed.

Last we come to the question of the criminal law, on which I shall comment only briefly even though it occupies much of Barnett's attention. As might be expected, he is a strong defender of privatizing the criminal law function, and he relies on economist Bruce Benson's useful work to show the extent to which the private sector in law enforcement has grown faster and performed better than the public sector in recent years. Although that point is surely true, Barnett could have spent at least some time trying to explain whether, and to what extent, improvements in public law enforcement account for some of the rapid decline in the crime rates that we have observed in recent years.

Even if we put that question aside, Barnett makes the same mistake of proportion that occurs elsewhere in the book. It is easy to show that increasing the level of private enforcement in the overall mix can produce substantial improvements, especially against a baseline of a generation ago. But it hardly follows that we should go the whole nine yards and do away with public enforcement altogether.

Indeed, much of the success of private enforcement depends on its ability to rely on a public enforcement backup. Private police may be good at preventing crimes and nudging suspicious types along their way (something the regular police could do if the Supreme Court came to its senses and eased up on its hostility toward anti-loitering laws). But when murders and robberies occur, when individuals cross state lines, when the use of force may be required in a standoff, the private police rely on public enforcement.

The University of Chicago has had extensive policing of Hyde Park for the better part of 50 years, but no one supposes that we would love to see the Chicago police leave the beat. Quite the opposite: Local arrangements are designed to make sure that each investment by the university does not lead to a corresponding diminution of public enforcement in the neighborhood, given the obvious temptations involved. What has to be done is to work on the proper mix of public and private. Law enforcement, like the construction and maintenance of infrastructure, has a necessary public component.

In sum, Barnett's book represents much of what is sound and much of what is suspect in traditional libertarian thought. Its basic instincts on the importance of liberty, property, contract, and tort are undeniably correct. The difficulties start when defenders of this system

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exaggerate its ability to address the wide range of problems that require some degree of government taking and regulation.

In refusing to address those problems, Barnett reminds me of physicians who defend therapeutic nihilism, claiming that most medical treatments have negative results, so patients are better off with no treatment at all. That position became untenable probably by the end of the 19th century, and certainly after the end of World War I. Yet it holds a lesson for us today: Regulation can kill, just as bad medicine can kill, but it can also serve useful ends.

Today the knowledge required for sensible regulation is available. Incremental improvements are possible; bad schemes can be denounced, good ones improved. That debate is where the action is, but Barnett will have to sit on the sidelines. Regulatory nihilism will not cut it as we enter the 21st century. Regulation beyond the libertarian norms is a necessity. The only question is whether we shall do the task wisely or poorly.

Richard A. Epstein (r-epstein@uchicago.edu) is the James Parker Hall Distinguished Service Professor of Law at the University of Chicago. His latest book is Principles for a Free Society: Reconciling Individual Liberty with the Common Good *(Perseus Press).*

Hooked on Fantasies

By Glenn Garvin

Dark Alliance: The CIA, the Contras, and the Crack Cocaine Explosion, by Gary Webb, New York: Seven Stories Press, 548 pages, $24.95

Hell hath no fury like a leftist scorned. And boy, have they been scorned for the past decade. The fall of the Berlin Wall, Tiananmen Square, the collapse of the Soviet Union and its Eastern European puppets, the deluge of Cuban rafters—the list is endless. It's gotten to the point where I wouldn't be surprised to see a mob of students marching on Sproul Hall at Berkeley, chanting, "Ho! Ho! Ho Chi Minh! General Motors is gonna win!"

But nothing, *nothing*, has stung like the defeat of the Sandinistas in Nicaragua. You could explain away the Soviet Union and even grizzled old Fidel Castro (four decades without elections and still counting) as cases of revolutionary sclerosis. And everyone knew China hadn't been the same since the Gang of Four was so indecorously tossed in the slam. But Nicaragua! Now there was socialism with a baby boomer face.

The fact that Ronald Reagan hated them so much was the best validation of all. Who could have believed that those ungrateful peasants would fling the Sandinistas overboard the first chance they got?

For the left, bad journalism has always been the continuation of war by other means, and journalism doesn't get much worse than *Dark Alliance*. It's Gary Webb's book-and-a-half-length expansion of the sensational series he published two years ago in the *San Jose Mercury News*. The series argued that the U.S.-backed contra rebels, whose war forced the Sandinistas to hold free elections, funded themselves by flooding the United States with cocaine. Contra cocaine, Webb claims, not only set off the nationwide explosion of low-priced crack but also triggered the rise of black street gangs in Los Angeles. And all the while the CIA stood by, winking and nodding.

The newspaper series was quickly shot to pieces by other news outlets, including *The New York Times*, *The Washington Post*, and the *Los Angeles Times*. Eventually even the *Mercury* itself, after sending a reporter around to recheck Webb's work, started backing away. Webb, not surprisingly, began intimating that his own newspaper was part of the conspiracy, and they soon parted ways.

"I'm not the first reporter to go after the CIA and lose his job," said Webb, a line (he was doubtless thinking) that will sound great in the final scene of the mini-series, as the sound effects men clank brass *cojones in the background.*

If the plot line of *Dark Alliance* sounds familiar, that's because it's appeared in other works of fantasy. The belief that the U.S. government forced cocaine into the ghetto in an attempt at genocide has attained urban myth status in the black community. Substitute the FBI for the CIA and the Mafia for the contras, and you have the plot of Mario Van Peebles' 1996 film *Panther.*

Ludicrous though it was, *Panther* sounded downright plausible next to the lawsuit filed by the Christic Institute, the leftist "public interest" law firm, in 1986. The suit, directed against a number of civilian supporters of the contras (including several former U.S. intelligence and counterinsurgency officials), said the whole war in Nicaragua was basically an excuse to sell drugs. The contras, the lawsuit said, were just one minor facet of a 20-year narcotics conspiracy by the CIA, the National Security Council, Cuban Americans, and right-wing Libyans.

Despite support from intellectual luminaries ranging from Sally Field to Bruce Springsteen, the lawsuit failed to impress a federal judge, who dismissed it as frivolous and ordered the Christic Institute to pay $1.2 million in legal costs for the defendants. (Another element of the Christic lawsuit was disproven a few years later when fingerprint evidence proved that a terrorist bombing that killed an American reporter was committed not by a right-wing Libyan working for the CIA, but by a left-wing Argentine working for the Sandinistas. Oops.)

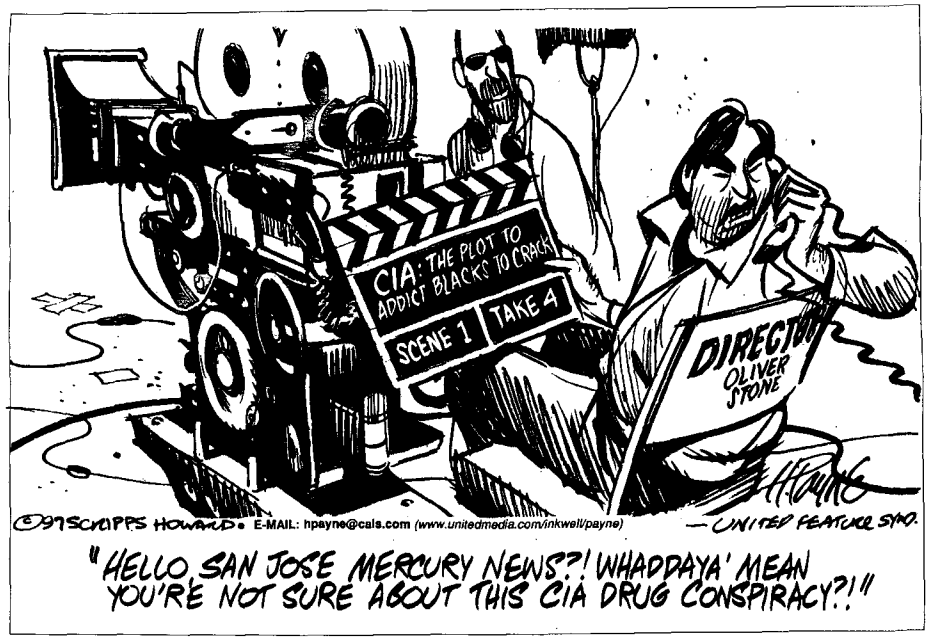
Webb tries to disguise them, but the bloodlines between the Christic Institute lawsuit and *Dark Alliance* are quite direct. The bulk of the book's Nicaragua reporting was done by Swiss journalist Georg Hodel, who worked closely with the Christic Institute. (The firmness of Hodel's grip on reality may be judged by the other conspiracy white whale he has been pursuing for years—that the Rockefeller family was the secret power behind Hitler.) Hodel and Webb were introduced by Christic Institute investigator Doug Vaughan. Though he discreetly fails to

mention it, at least half a dozen of the people Webb thanks in his preface worked for or with the Christic Institute.

The Christic pedigree is important because of what it says about intellectual honesty. The institute's lawsuit was a fraud from the start. At its heart was an affidavit supposedly based on testimony of 79 secret witnesses whose identity could not be revealed because their lives were in danger. When the judge finally warned Christic to either reveal the names or withdraw the affidavit, it turned out that several were listed twice. Others were newspaper reporters who knew nothing more about the case than they had been told by Christic officials. One of the most important was someone known merely as "David" from Costa Rica, whom no one from Christic had ever met or spoken with; he was a supposed barroom acquaintance of another witness, who didn't know his last name or address, and hadn't seen him in years. And some witnesses obviously couldn't have feared for their lives if their names were disclosed because they were already dead. (Christic's lead attorney, Daniel Sheehan, must have been taking a good many depositions with his Ouiji board. When he submitted his list of 2,176 trial witnesses—that number is not a typo—at least 12 percent of them turned out to be dead.)

This same flexible approach to the facts colors *Dark Alliance* from cover to cover. How can I begin to tell you about this book? Maybe I should start with a small detail, like this one: Webb's salute in passing to his colleague Roberto Orozco, "who later lost his job at [the Nicaraguan daily newspaper] *La Prensa* for pursuing this story." As they say in that Hertz ad, well, not exactly. It's true Orozco quarreled with editors over, among other things, chasing a story about the CIA and narcotrafficking. But as any *La Prensa* reporter can tell you, what got him fired was a note he posted on the newsroom bulletin board: "This place is full of shit."

Or perhaps it would be better to plunge right into the whoppers, the paranoid fantasies that call into question not only Webb's basic skills as a reporter but his entire psychiatric history, like this one: He recounts the tale of a captured Colombian narcotrafficker named Allen Raul Rudd, who explained how then–Vice President George Bush had flown down to Colombia to strike a bargain with the Medellin cocaine cartel. The agreement was that the cartel could fly as much cocaine as it wanted into U.S. military bases as long as it sold guns to the contra rebels in Nicaragua. The deal was sealed by Bush and cartel leader Jorge Ochoa, who posed for a photo together in front of suitcases stuffed with cash.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"HELLO, SAN JOSE MERCURY NEWS?! WHADDAYA' MEAN YOU'RE NOT SURE ABOUT THIS CIA DRUG CONSPIRACY?!"

HENRY PAYNE

To buy that story, you have to believe not only that Bush broke all existing Washington records for venality but that he was at once clever enough to give the slip to the phalanx of U.S. reporters who dog the vice president's every step, yet stupid enough to pose for a photo that would blow the whole thing. Then you've got to concede that Jorge Ochoa was even stupider, because even as the United States was pushing Colombia into a war on the cartels that would end in Ochoa's death, he never went on television to wave around a picture that would have proven that the biggest pusher of all was sitting in the White House.

Every page of *Dark Alliance* is like this, festooned with false information ranging from Clintonian half-truths to loony-tune delusions. No subject is too great, too small, or too far afield for Webb to distort or falsify. The misrepresentations run the gamut from trivial acts of self-aggrandizement, like Webb's claim that he won a Pulitzer Prize that was really awarded to the entire staff of the *Mercury News*, to calculated character assassinations that would be grounds for horsewhipping if they were not so obviously mendacious. Does Webb really think that anyone is going to believe that Seymour Hersh—the reporter who broke not only the My Lai massacre but the story of CIA monitoring of domestic dissident groups—is a CIA tool?

The fact that Gary Webb is a jerk does not, of course, necessarily mean that the CIA and the contras weren't cocaine merchants, any more than the fact that Joe McCarthy was a jerk proved there were no communists. Government agencies can and do run dangerously off-track all the time, and the peril is greatest when you're talking about an organization like the CIA, which not only is imbued with a sense of higher purpose (protecting national security) but shrouded in secrecy as well.

Moreover, if the contras had managed to skirt all entanglement with narcotraffickers, it would make them unique among the world's insurgent movements of the past 20 years. Every guerrilla group, from the anti-communist *mujahideen* in Afghanistan to the nutball Maoists of Peru's Shining Path, has at least brushed shoulders with the drug trade. For one thing, it is only a matter of time until supply pilots flying around the bush realize that bags of white powder can be profitably stashed among the loads of guns they're carrying. A few contra pilots and their associates—particularly on the so-called southern front

of the war, where the commander was the erratic ex-Sandinista war hero Eden Pastora—succumbed. But to label that a CIA-contra-cocaine connection is like trying to label the Pentagon a pusher because a private in Fort Hood, Texas, sells a lid to his girlfriend's brother.

Much more serious is the inevitable moment when it occurs to guerrilla leaders that dope represents a potentially lucrative source of funding: An army travels on its wallet, and cash flow, be it from Moscow or Washington, can be erratic. The temptation has proven irresistible to many insurgencies, especially in Latin America; drug money is a major source of revenue to all the various guerrilla groups in Colombia, Peru, and Bolivia, and the Marxist Revolutionary Forces of Columbia (FARC) may be the biggest narcotrafficking gang in the world.

The contras—especially before the United States began funding them in 1981—had the same money problems as their Marxist counterparts. They turned to some of the same solutions. One contra faction based in Guatemala raised money for a time through bank robberies, car thefts, and kidnappings. But in late 1981, as American money began to flow to a united contra front based in Honduras, new commander Enrique Bermudez ordered an end to the Al Capone stuff. His officers complained: If robberies were good enough for the communists in El Salvador and Colombia, why not for us? Because, Bermudez said, nobody in Moscow cared what Soviet clients did to raise money. In Washington, it would be a different story.

There was a serious schism with the contras over the issue, and Bermudez had to oust a number of officers to make it stick. But he finally prevailed, in large part because there was no longer any need for the contras to pay their own way. From 1981 to 1984, the United States put up $72 million for the contras, more than enough to fund them even as their numbers increased to 15,000. Congress, in a spat with Reagan, closed the spigot in 1985, and the contras began withdrawing from Nicaragua, triggering Oliver North's now-infamous efforts to enlist the Ayatollah Khomeini in the anti-Sandinista cause. In 1986, another appropriation of $100 million started the war up again.

So you don't have to believe the CIA and contras were saints to stay out of the cocaine business, only that they had a rudimentary sense of self-preservation. Between 1982 and 1985, there was no need to undertake anything as insanely risky as running dope into American ghettos. During the 18-month span in 1985 and 1986 when they did need money, the evidence is overwhelming that the contras didn't have the pot of cocaine gold that Webb imagines—if they had, they would have stayed in Nicaragua and continued the war instead of withdrawing to Honduras.

Dark Alliance isn't really about crack or the ghetto. It's about vindicating the American left. If proving the Sandinistas were the good guys has gotten tougher as the evidence mounts that they used their power to amass offshore bank accounts and molest their stepdaughters, then more energy will have to go into proving the contras were the bad guys.

Webb would have known this if he had ever taken the trouble to interview any actual contras, or any of the CIA officers who worked them. But he didn't. His evidence that the contras were selling cocaine is almost entirely drawn from the claims of a few Nicaraguan traffickers facing long jail sentences who were using a the-CIA-made-me-do-it defense. Their involvement with the contras was tangential, if even that. And by their own testimony—which Webb distorts to the point of falsehood—they stopped giving the contras any money at all by 1982, if not earlier.

Webb's attempts to inflate bit players into contra warlords can be downright comic. Take the case of Norwin Meneses, the Professor Moriarty of *Dark Alliance.* Webb says he was chief of "intelligence and security" for the contras...in California. (Does anyone out there know how many Sandinista divisions were based in San Francisco?) And Meneses certainly kept the contra coffers full. Webb triumphantly produces written proof of $484.20 in contributions. In small bills, I imagine, to confound all those Sandinista search-and-destroy teams running around Fisherman's Wharf.

If Meneses and his pals barely qualified as featherweights as far as their contra credentials go, their credits as cocaine traffickers weren't much more impressive. Webb breathlessly reports that they brought in five tons of cocaine over a decade. To put that in perspective, U.S. Customs agents found two tons in *a single plane* on a runway at Miami International in 1981. That's why Webb's claim that the Nicaraguan dealers single-handedly blighted inner-city Los Angeles with crack is not even taken seriously enough to rebut by most of his critics.

But then, *Dark Alliance* isn't really about crack or the ghetto. It's about vindicating the American left. If proving that the Sandinistas were the good guys has gotten considerably tougher as the evidence mounts that they used their time in power to amass offshore bank accounts and molest their 11-year-old stepdaughters, then more energy will have to go into proving the contras were the bad guys. I'd look for *Dark Alliance II: The CIA, the Contras, and the AIDS Explosion* any day now. That will be followed, if necessary, by *Dark Alliance III: The CIA, the Contras, and Jerry Springer.* And were those Nicaraguan cigars that Monica Lewinsky used to tempt the president? Anything is possible, except for the Gary Webbs of the world to admit that Ronald Reagan might have known more about Central America in the 1980s than they did.

Contributing Editor Glenn Garvin (ggarvin @ibw.com.ni) is Managua bureau chief of the Miami Herald *and author of* Everybody Had His Own Gringo: The CIA & the Contras *(Brassey's).*

Truth Believer

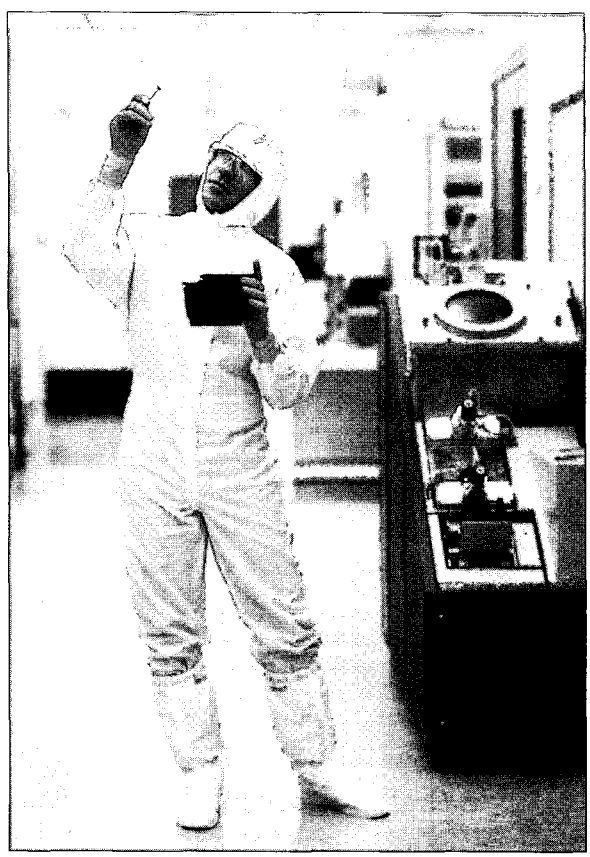
By Jonathan Rauch

Manifesto of a Passionate Moderate: Unfashionable Essays, by Susan Haack, Chicago: University of Chicago Press, 212 pages, $22.50

When was the last time you heard from a professional philosopher who wanted to intervene in a public argument in order to say something sane? Today in Washington, where I live and work, it is not unusual for an economist—a Paul Krugman, a Herb Stein, a Robert Reischauer, a Jagdish Bhagwati—to step forward and say something sensible or informative or (even) useful. Sometimes political scientists also do it, although that is somewhat rarer; and certainly working scientists—Freeman Dyson or Edward O. Wilson or Stephen Jay Gould—are helpful. But philosophers? When we hear from them, whether "we" are in Washington or just in ordinary life, they come as aliens from outer space, depositing here or there a podlike idea whose esotericism or smugness puzzles or annoys us; and then the little green philosophical men climb back aboard their saucer and fly away.

Philosophy at its best can help save society, but today what needs saving is philosophy itself, from death by obscurity. To re-engage, philosophers must relearn that it is not enough merely to be clever or politically advanced. In fact, it is not anything, really, merely to be clever or politically advanced. What matters is being right, and this means, for the philosopher no less than for the scientist, testing one's ideas honestly and carefully and in a spirit that puts truth ahead of cleverness or politics. Which brings us to Charles Sanders Peirce and his intellectual goddaughter, Susan Haack.

Peirce (1839–1914; pronounced "purse") was a philosopher of science and knowledge, a working physicist and astronomer, a pioneer in semiotics and symbolic logic. His astonishingly broad interests ranged from aesthetics to photometrics, and his writings were prolific and strikingly original. But because he was an irascible and eccentric character who managed to keep only one brief academic job, because his writings were fragmentary and his style often dense and thorny (though it could also be majestic and passionate), and because he never inspired a social movement or attracted a public following, his name has never been known outside of a fairly small circle of cognoscenti. He spent his last years in poverty and isolation, too poor even for a decent burial. This would have been a shame even if not for the fact that, as it happens, he was the greatest of all American philosophers.



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Cleaning the Academic House: Philosopher Susan Haack is appalled by current notions of "politically adequate research and scholarship." To politicize inquiry, she says, is to cut corners on all the hard, painful, frustrating work of figuring out what is actually the case, and to substitute foregone conclusions.

Peirce founded America's signature philosophy, pragmatism, in its original, most refined vintage. To wit: A statement's meaning is the sum of all the ways in which it might be tested in the real world (or in logical space). Or, as Peirce put it more picturesquely, "By their fruits ye shall know them." If a proposition bears no pragmatic fruit, it has no proper meaning at all, and is nonsense (he called metaphysics a "puny, rickety and scrofulous science"). To have meaning, then, is to be testable, and to learn is to test.

Anyone can test ideas according to his own lights, of course, and can demonstrate to his own satisfaction that 47 angels can dance on the head of a pin. But scientific testing is different, because it happens only when a network of people test each other. "Individualism and falsity are one and the same," Peirce wrote; "one man's experience is nothing if it stands alone." He pushed far out ahead of his time, and in some ways even of our time, in seeing the profoundly communitarian nature of scientific inquiry. Science, he said, must be a public, communal process in which all assume that each may be wrong, and each constantly checks for his own and other mistakes (thus the Peircean doctrine of "fallibilism"). And this social process of inquiry, he further saw, could work only if most inquirers, most of the time, maintained what he called the scientific attitude: a genuine desire to learn, a genuine humility before the difficulty of learning, and above all a determination to follow the search wherever it leads.

In a thousand ways, on a thousand battlements, Peirce defended that ethic. The rule which deserves to be inscribed on every wall of the city of philosophy, he said, is: Do not block the way of inquiry. When he spoke of rescuing "the good ship Philosophy for the service of Science from the hands of the lawless rovers of the sea of literature," he might have been talking about preserving the scientific attitude from today's deconstructionists and subjectivists and radical feminists and egalitarians, who regard science as little more than one way people

talk—and as a sexist, white-male, oppressive way at that.

With *Manifesto of a Passionate Moderate*, a modern-day Peircean—the genuine article—wades into today's debate. Now, a Peircean is an odd bird in 1998. I am one, Haack is another, and out there somewhere may be a third (drop me a line). I should say that, although Haack and I are not personal friends, some years ago she favorably reviewed a book that I wrote, and we are intellectual allies. So take my reaction with a grain of salt, if you like. Still, I'll be surprised if other readers are not as refreshed and invigorated as I was by Haack's no-nonsense defense of uncorrupt inquiry—in other words, of intellectual integrity.

Her book takes the form of 11 loosely related essays, which vary a good deal not only in subject but in accessibility to amateurs. Haack is a forthright and opinionated writer, and often witty ("better ostracism than ostrich-ism!"); but she is also a no-kidding philosopher (at the University of Miami) who does no-kidding philosophy right here in this book. The lay reader can always follow her discussion of, say, the epistemology of metaphor, but at a bit of a distance.

On the other hand, she also writes trenchantly on feminism, affirmative action, multiculturalism, academic life, and other staples of the culture wars. She places herself in the political center, extreme only in her dislike of extremes, and from there she makes some telling observations: against the "this-or-nothingism" implicit in the current affirmative action debate, for instance, and against feminist epistemologists whose claims about "women's ways of knowing" dress up old stereotypes as new theories. But I think the more important reason her book is of general interest is that she understands the Peircean precept that how you think matters at least as much as what you think, and in her book she provides a bracing real-life demonstration.

On the first page of the first essay, "Confessions of an Old-Fashioned Prig," Haack announces what turns out to be the project common to all these essays: "I shall try in what follows to articulate what it means to care about truth, what intellectual integrity is and why we value it, and what has gone wrong in the thinking of those who deny its importance." She addresses herself, she declares, to all those who, troubled by the trendy irrationalist tendencies of postmodernist academia, are ready to listen to "the still small voice that whispers, 'bosh!'"

A scholar's job is first and foremost to inquire in order to know, not in order to advance some political agenda or other. Haack is appalled by the notion, advanced by a feminist philosopher, of "politically adequate research and scholarship." To politicize inquiry is to cut corners on all the hard, painful, frustrating work of figuring out what is actually the case, and instead to substitute what Peirce called sham reasoning, which goes through the motions of inquiry in order to demonstrate some foregone conclusion. And "the sham reasoner is not really engaged in inquiry at all," says Haack, sounding very much like her mentor. "This should remind us that those who despair of honest inquiry cannot be in the truth-seeking business (as they should say, 'the "truth" racket'); they are in the propaganda business."

"It is true that scientific knowledge is socially constructed," writes Susan Haack in her *Manifesto*. But not all processes of social construction are equal. Science is distinct precisely because it is a social process that is *not* merely a matter of social negotiation, or of political domination by one faction.

Now, to write in this way, in 1998 as opposed to 1898, is to court two kinds of dismissal: first, as a naif, who fails to appreciate the inherent subjectivity and social malleability of science; second, as a curmudgeon, who just crosses her arms and says "harrumph." Haack, however, is not the right person to accuse of epistemological naiveté. She understands that science is a social process which is inevitably influenced by society (and, yes, by politics). She knows that objectivity is in the eye of the beholder, and that most theories are "underdetermined" by evidence, meaning that scientists have lots of wiggle room, and lots of room for bias and emotion, in deciding what to believe. To all of this she adds a further understanding which her opponents mainly lack: that, despite all of the above, science and the scientific attitude are still better, much better, than the alternatives.

"In one sense, it is true that scientific knowledge is socially constructed," she says. But this has no radical consequences at all, since it does not follow either that science's model of reality is arbitrary or that the truth-seeking spirit is unhelpful in guiding our model building. In any case, not all processes of social construction are equal. Science is distinct precisely because it is a social process that is *not* merely a matter of social negotiation between groups, or of political domination by one faction. In fact, in a scientific community of real, imperfect human beings, "individual idiosyncracies or weaknesses may compensate for each other." And so, a bit paradoxically, "a real community of imperfect inquirers can be a tolerable ersatz of an ideal community."

For the community to work requires a commitment to intellectual integrity, which is of moral as well as social value. Commitment to disinterested inquiry, at least as a goal, is a mark of good character, not just of sound practice. "That is why," Haack says, "it seems almost indecent when an academic whose job is to inquire denies the intelligibility or denigrates the desirability of the ideal of honest inquiry."

Well, she does sound a bit curmudgeonly. "Harrumph," indeed. And to this complaint Haack finds a liberating answer: You bet! If philosophers who think of themselves as seeking truth are, in Richard Rorty's patronizing phrase, "lovably old-fashioned prigs," then sign her up. She is among those who, she says, "find Peirce's curmudgeonliness refreshing." Many, I think, will in turn be refreshed by her own treatment of what she calls "foam-rubber language," of "preposterism," of "fake

reasoning" (a.k.a. "bullshitting"—spinning theories without really caring whether they're true). Narcissistic cleverness, to Haack, is positively immoral.

Therein lies what I think is most important in her book: not her (often shrewd) observations on the culture wars, nor her (usually convincing) philosophical demonstrations, but the attitude she embodies. She talks in a voice that echoes from the age of William James, John Dewey, Bertrand Russell, and Peirce himself, an age when Anglo-American philosophy was not just a literary game or a café argument about politics. Rather, philosophy was *about* something: how to conduct personal and social inquiry, and thus how to learn, and thus how to live. The best way to convey what I mean about the air-clearing quality of this voice is to quote it:

"'Diversity' has become one of those foam-rubber, public-relations words which muffles the otherwise obvious: that a philosophy department as varied as you like with respect to sex, race, ethnicity, and all that, all of [whose members] were students of Professor Davidson's working on adverbs ending in 'ingly' (or all of whom were students of Professor Harding's tracking down rape and torture metaphors in Newton—or whatever) would not, for all its diversity in one sense, be diverse in the sense that matters."

So the virtue of Haack's book, and I mean *virtue* in the ethical sense, is that it embodies the attitude that it exalts. Good teachers give us not just the right idea but the right frame of mind. Haack's voice is urbane, sensible, passionate—the voice of philosophy that matters. How good to hear it again. ◆

Jonathan Rauch is national correspondent of National Journal *and author of* Kindly Inquisitors: The New Attacks on Free Thought *(University of Chicago Press).*

The Advantages of Ownership

By John V.C. Nye

The Noblest Triumph: Property and Prosperity Through the Ages, by Tom Bethell, New York: St. Martin's Press, 378 pages, $29.95

If told that Country X had a large population, abundant natural resources, a highly educated labor force, access to the latest science and technology, vast tracts of undeveloped land, cheap wages, decent urban infrastructure, and preferential treatment by world trading partners, most people would see no clear obstacles to rapid economic growth. Yet Russia has had all these advantages for the last decade, and so did the Soviet Union for several decades before. They were not sufficient to produce a high standard of living.

In *The Noblest Triumph*, Tom Bethell shows that such puzzles can be understood by examining the institutions that determine how property is held and transferred. Bethell, *The American Spectator*'s Washington correspondent and a visiting fellow at the Hoover Institution, traces the intellectual fall and rise of private property, taking pains to expand our understanding of this complicated and sometimes arcane topic by incorporating digressions into political and social history. Drawing on examples from ancient Rome, early modern Europe, and colonial America, he shows that conflict and stagnation are the predictable results when property is insecure or poorly defined.

It is sobering to consider that Karl Marx had a deeper and more sincere appreciation of private property's virtues than most of the scholars who dominated academia during the early and middle parts of this century. Economists at the leading graduate schools could (and still can) go through life without hearing more than a throwaway remark about the significance of property for economic development. Until very recently, the study of economics was institution-free, and one could say little about the choice between capitalism and socialism on the basis of the abstract mathematical theories that characterized the

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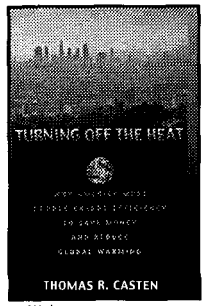

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Market Disorder: Despite advantages such as a large population, abundant natural resources, an educated labor force, and decent infrastructure, Russia has been unable to flourish under either the Communists or their successors. Tom Bethell's *The Noblest Triumph* argues that lack of clear property rights is at the root of the failure.

field. Meanwhile, over in the law schools, little consideration was given to the ways law affects the economy or, conversely, the ways that economic principles constrain the law.

Yet beginning in the 1950s, innovative thinkers such as Armen Alchian, Ronald Coase, Douglass North, James Buchanan, Oliver Williamson, and Mancur Olson in economics, Elinor Ostrom in political science, and Aaron Director and Richard Posner in law began to reshape the study of political economy by paying serious attention to the institutions of private property. By considering how the structure of politics and the law shaped the incentives of economic actors, they reawakened interest in the foundations of successful economic systems that lay at the heart of Adam Smith's pioneering explorations of the subject over 200 years ago.

These intellectual pioneers persisted in their efforts despite the apparent lack of interest from their colleagues, which in some cases amounted to scorn or outright hostility. The mainstream of the economics profession was preoccupied with macro models designed to eliminate the business cycle; sterile if elegant mathematical exercises in ever more refined equilibria; and utopian schemes to build a welfare state at home or jump-start growth abroad by transferring capital and technology to the disadvantaged denizens of the Third World. Development policy provided the most damning case against the mainstream because advice was confined to providing financial capital or technical know-how, with little support for market reforms and no consideration given to the virtues of private property and secure legal arrangements.

The failure of much development policy abroad, the disillusionment with heavy-handed regulation at home, the collapse of the Soviet Union, and the dramatic shift in Communist China toward a quasi-market economy fostered greater appreciation for the work of those who studied the subtle and intricate connections between the politico-legal institutions of bourgeois capitalism and the success of market economies. Law and economics became a major field of study in most law schools and several leading economics departments. Some of the pioneering scholars in political economy and economic development went on to receive the Nobel Memorial Prize in Economics. As Bethell notes, two of Ronald Coase's most famous papers have become among the most widely cited articles in economics. Moreover, the work of Nobel laureates Coase, North, and Buchanan, along with that of other major contributors to what is known as the New Institutional Economics, has spread to the neighboring fields of political science, law, history, sociology, and anthropology, showing some promise of becoming the foundation of a unified social science.

Despite their apparent success, these scholars are still considered to be slightly outside the mainstream. Though the best are cited and feted, their research is treated as slightly frivolous by many of the leading economics departments, and their followers and students are likely to be back in the line when it's time to make academic appointments or hand out grants. Nonetheless, few areas in the social sciences have seen such sustained and vigorous growth. It seems likely that the New Institutional Economics, combining as it does an appreciation for the best of standard economic theory with a more nuanced and practical attention to the law, political institutions, and history, will become more influential in both intellectual and policy circles.

Summarizing and explaining the origins of this vast body of ideas for a lay audience is a daunting task, and it is to Bethell's credit that he has carried it out conscientiously. It is an especially difficult story to dramatize because the struggles have not been primarily political or particularly ideological. There are no revolutionary conventions to look back on, or stormy battles culminating in the destruction of empires. And yet, the issues at the heart of this transformation arguably have been of greater consequence for the collapse of empires and the perpetuation of Western leadership than any election or military battle.

Bethell seems to have read or at least skimmed the most heavily cited work, while having consulted the leading figures in the field, many of whom are still around to tell us how their thoughts on the subject have evolved during the last half-cen-

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tury. It does not diminish his impressive accomplishment to note that he does not always succeed in clearly explaining the most important ideas. The writing is labored in spots, and there were times when I found the discussion hard to follow. Bethell's ambition is praiseworthy, but skipping through law, economics, history, and politics without turning whole chapters into mini-textbooks inevitably means that many technical points are never made clear, and omissions and errors creep in. The definitive book about the property rights revolution in academia remains to be written.

The property rights revolution in academia is an important story, perhaps the most significant intellectual event of the last 50 years. Long after various fads have been forgotten, the old institution of private property and our interpretations of it will continue to exert a profound influence on every human's life.

But this is an important story, perhaps the most significant intellectual event of the last 50 years. Other academics will no doubt accuse me of special pleading, but so long as the economy remains at the center of most people's concerns, the ideas and events so vigorously cataloged in this volume will remain central to the struggle for continued prosperity in the next century and in centuries to come. Long after the various New Economies have been forgotten, the old institution of private property and our interpretations of its workings will continue to exert a profound influence on every human's life. ◆

John V.C. Nye (nye@wueconb.wustl.edu), an associate professor of economics and history at Washington University in St. Louis, is a founding member of the International Society for the New Institutional Economics.

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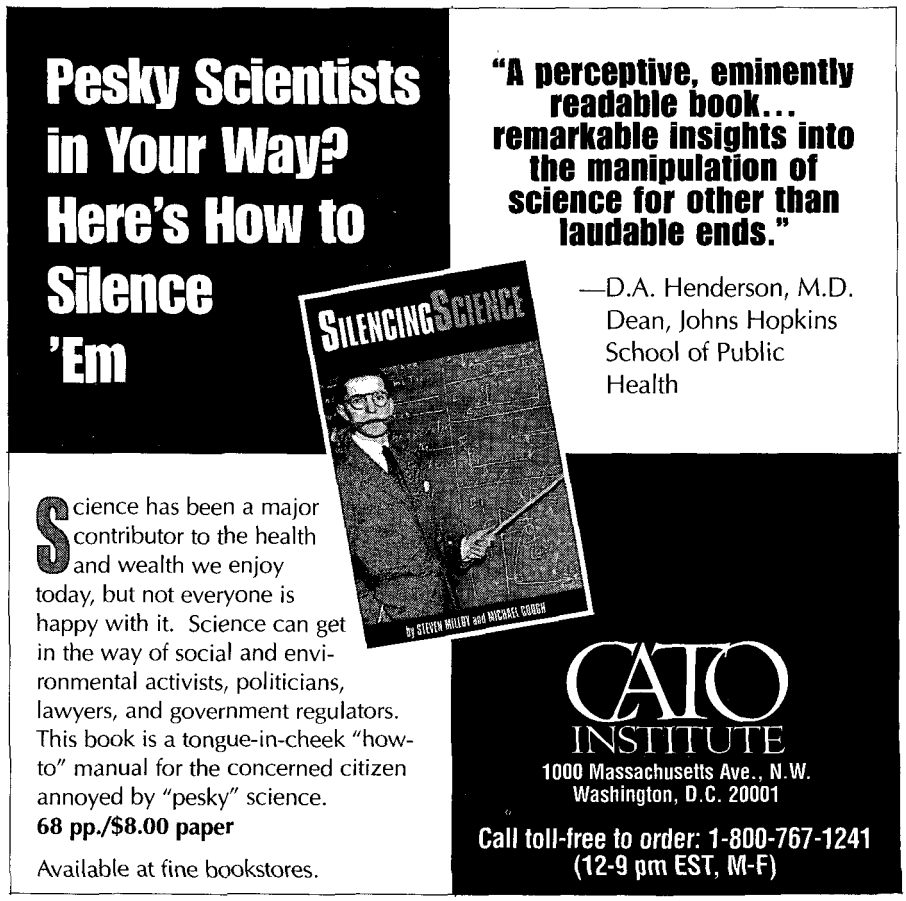
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Sluggers Row

How to turn cultural progress—and good, clean fun—into racist calamity

By Thomas W. Hazlett

It was a decade ago that I heard a joke so remarkably on point that I still delight in inflicting it on others.

God decides to end the world. He calls the editor at *The New York Times* with whom he discusses all his major decisions. The editor tries to talk God out of it, to no avail. So the editor asks if the *Times* can at least have an exclusive. God thinks it over, but decides that would be unfair. He rules that he will share his decision with three other dailies: *The Wall Street Journal, USA Today*, and *The Washington Post.*

The papers rush to put out their truly final editions. First out is *The New York Times*: "World to End Tomorrow," runs a tasteful, smallish headline atop the front page's right-hand column, "News & Analysis, Page B11." *The Wall Street Journal* is next: "World Ends Tomorrow," blares the banner running across the top of page one, "Market to Close Early." Then comes *USA Today*. The paper's entire front page is consumed by just two words: "WE'RE GONE!" Finally, *The Washington Post* hits the streets. In bold letters standing six-inches high, it grimly announces: "World to End Tomorrow, Women and Minorities Affected the Most."

You may now share my moment of instant recall when reading *The Washington Post* headline of September 5, 1998: "The Home Run Chase in White and Black; McGwire, Sosa Draw Diverse Fans." Yes, the National Pastime's greatest-ever home-run derby had been subtitled "Women and Minorities Affected the Most." The whole fan frenzy involving two sports heroes was reduced to a racist melodrama starring that perennial bad boy, Amerikkka.

While the *Post*'s crack journalists admitted finding trace elements of what was once called "sportsmanship," they focused on a disturbing sub-theme: "For all that is inspiring and wholesome about the home run derby, it also illuminates the eternal American dilemma of race. It is McGwire who has the overwhelming advantage over Sosa in the competition for the public's heart. (Internet search engines find McGwire's name more than twice as often as Sosa's.) Is that because the Cardinal is the better slugger, or is it a matter of color, ethnicity and language?"

The *Post* wanted you to believe that of the four possible hypotheses explaining the alleged public preference for McGwire over Sosa, three reflected ugliness in our public soul. The technical term for this is "stacking the deck." Assuming that McGwire was the sort of national hero that Sosa was not—something the *Post* reporters never really established—that "fact" could most easily be explained by benign considerations.

A preference for McGwire may be a reflection of what economists call "sticky expectations," a tendency for people to be strongly influenced in their views about the future by what has already happened in the past. In that Mark McGwire had hit many hundreds of home runs while Sosa was gearing up for his first-ever shot at the big time, more people tended to know and root for McGwire. This was hardly irrational: McGwire—in the end—did win the home-run race, 70 to 66.

Additionally, recall the preseason hype touting McGwire's anticipated rival—not Sammy Sosa, but (the similarly black) Ken Griffey Jr. Lots of early-season excitement (and Internet hits) went Junior's way. That fan-favorite Griffey was so widely heralded over the ultimately more sluggingly successful Sammy Sosa is indeed a potential source of injustice for the easily offended to explore. But the topic seems not to have penetrated the *Post*'s black-and-white editorial news filter.

Instead, the paper's quest for proof of racial preference led it to interview one Jorge Camelia, a "17-year-old immigrant from Argentina," who opined: "It's like when Hank Aaron broke Ruth's home run record—the white Americans were against Aaron." Here's another moment of instant recall: As a Los Angeles Dodger fan, I well remember white Atlanta Braves fans, deep in the heart of Dixie, cheering wildly for Hammering Hank on the day he hit Al Downing's pitch over the left field wall to break the Bambino's career mark.

Camelia would no doubt be greatly disappointed to know that the slugger America disparaged was pink-skinned Roger Maris, who, when clubbing 61 homers to break Babe Ruth's single-season record, was rewarded with a footnote in the record books suggesting he hadn't *really* topped the Sultan of Swat.

Mark McGwire has proven an extremely likable sports hero in an era when star players don't quite measure up as role models. He's a good sport, a hard worker, a dedicated dad, and thus far appears not to have murdered any ex-wives. But ditto for the NBA's Michael Jordan, and a sharp investor will trade 107.8 Marks for 1 Jordan any day. Sammy Sosa, for his part, performed magnificently in 1998, both at the plate and in the media. The Dominican Republic native's refreshing innocence had all sorts of people cheering him on. Had the *Post*'s reporters tuned into any "all sports all the time" radio station, they would have discovered legions of devoted sports fans who loved Sammy all the time.

Leave it to the *Post* to salvage bitterness from triumph: A moment when the culture embraced two talented athletes who competed fairly, behaved as gentlemen, strove to win, and were cheered on by millions—all so glorious a testament to the social order that the immigrant Sosa adopted "I love America" as his mantra. But the *Post* got its exclusive: "Secret Hatreds Were Harbored. Read All About It!"

Go ahead, God: End it now.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) is an economist at the University of California at Davis and a resident scholar at the American Enterprise Institute.

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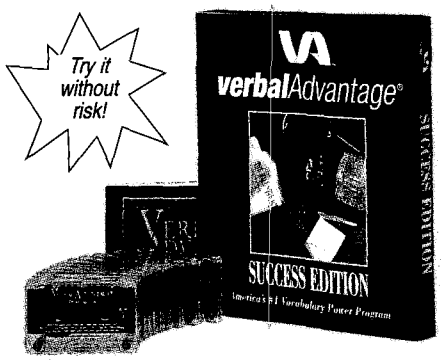

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